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Promotion and protection of the rights of children: promotion and protection of the rights of children

Effective prevention strategies in combating the sale and sexual exploitation of children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, in accordance with Assembly resolution 67/152.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

Summary

The present report is submitted pursuant to General Assembly resolution 67/152. The Special Rapporteur describes her activities in relation to the discharge of her mandate since her previous report to the Assembly (A/67/291).

In the report, the Special Rapporteur also analyses the key role of efficient prevention strategies in combating the sale and sexual exploitation of children and makes specific recommendations on how to establish comprehensive, proactive, effective and sustainable prevention within a rights-based comprehensive child protection system.

I. Working methods and activities

A. Working methods

1. In its resolution 67/152, the General Assembly requested the Special Rapporteur on the sale of children, child prostitution and child pornography to continue to submit reports to the Assembly and the Human Rights Council on the activities undertaken in the fulfilment of her mandate. The present report contains information on the activities undertaken from August 2012 to August 2013 and provides the Special Rapporteur's analysis of the key role of effective prevention strategies in combating the sale and sexual exploitation of children.

B. Activities

1. Human Rights Council

2. In her annual report, submitted to the Human Rights Council at its twenty-second session (A/HRC/22/54), the Special Rapporteur focused her research on the protection of children from sexual exploitation in travel and tourism. There were two addenda to her report: the first dealing with her visit to Guatemala (20-29 August 2012), and the second with her visit to Honduras (30 August-7 September 2012).

2. Country visits

3. The Special Rapporteur undertook official visits to Kyrgyzstan, from 15 to 26 April 2013, and Madagascar, from 15 to 26 July 2013. The Special Rapporteur has yet to receive replies to her requests for invitations from Benin, Cambodia, Canada, Gambia, Nepal, Nicaragua, Nigeria, Viet Nam and Venezuela (Bolivarian Republic of), as well as confirmation of the new dates for her visit to India, which was postponed by the Government in April 2012.

3. Conferences, seminars and engagement with civil society

4. The Special Rapporteur participated in numerous conferences and seminars during the period under review. On 6 and 7 August 2012, she attended a workshop on human rights and technology at Stanford University, United States of America. From 9 to 11 August, she participated as a lecturer in a summer course on child rights organized by the University of Moncton, Canada. In Geneva, on 28 September, she participated in the day of general discussion of the Committee on the Rights of the Child on migrant children. She delivered a keynote speech at the World Congress for the Rights of Children and Adolescents in San Juan, Argentina, on 16 October. She participated in the General Assembly of Plan International held in Brighton, United Kingdom of Great Britain and Northern Ireland, from 23 to 25 October. She participated in the Fourth Regional Workshop on Police and Gendarmerie Training on Child Protection organized in Lomé from 5 to 9 November by the United Nations Children's Fund (UNICEF), the International Bureau for Children's Rights and Save the Children. She participated in a conference on child protection systems organized in New Delhi from 13 to 16 November by UNICEF, the Office of the United Nations High Commissioner for Refugees (UNHCR), Save the Children and World Vision. She delivered a keynote speech at the Virtual Global Taskforce conference on child safety online, held in Abu Dhabi from 11 to

13 December 2012. She delivered a keynote speech at a International Criminal Police Organization (INTERPOL) conference on crimes against children, held in Bangkok from 19 to 21 March 2013. On 28 and 29 May, she participated in a conference organized by UNICEF in the Dominican Republic on good practices relating to the prevention of sexual exploitation of children and adolescents in travel and tourism. She made a presentation at a seminar organized by Samu Social in Paris from 6 to 11 June, on the issue of street children. A keynote speech was delivered on her behalf at an ECPAT conference organized in Warsaw on 13 and 14 June on the protection of children in the framework of mega events. She also participated in a regional consultation organized by ECPAT in Addis Ababa on 1 and 2 August 2013 on actions to stop the commercial sexual exploitation of children in Africa.

II. Efficient prevention strategies in combating the sale and sexual exploitation of children

A. Introduction

1. Context

5. Prevention is widely recognized as a priority concern and critical dimension of the fight against the sale of children, child prostitution and child pornography. In the child rights framework, prevention lies at the core of child protection. Articles 34 and 35 of the Convention on the Rights of the Child expressly concentrate on the obligation of States to take preventive measures to protect children from sexual abuse and exploitation, and from the sale of and trafficking in children. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography contains a set of detailed measures State parties are required to adopt for prevention. In his 2006 report (A/61/299), the independent expert for the United Nations study on violence against children emphasized that all violence is preventable and called for prioritizing prevention. The 2008 Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents also underscores the importance of prevention. Throughout all her thematic and country reports, the Special Rapporteur has emphasized the importance of preventive actions and has described the good practices as well as the challenges faced in this area.

6. Despite numerous initiatives aimed at preventing the sale and sexual exploitation of children, a high number of children worldwide continue to be the victims of such crimes. Preventive actions often involve sporadic and scattered activities that fail to address the various underlying factors in a systematic, holistic and sustainable manner. As a result, they are frequently inadequate to ensure effective protection to children over the long run.

7. The multidimensional, complex and evolving underlying factors of the sale and sexual exploitation of children require the establishment of comprehensive, proactive and sustainable prevention strategies before violations occur and reoccur time and again.

8. Furthermore, prevention is cost-effective. The costs of response interventions are much higher than those of preventive measures. Society pays a high price in

socioeconomic terms for the long-term effects of harm, in particular owing to the irreversible consequences to a child's health and development.[1] Investing in prevention is therefore not only a legal and moral obligation for the protection of children's rights. It also holds significant positive value for the State and society.

2. Objective of the report

9. The present report aims to provide a practical understanding of the various dimensions of the prevention of the sale and sexual exploitation of children and the integrated, multisectoral approach needed for effective prevention strategies. It seeks to contribute to the strengthening of child protection systems and, more broadly, to advancing the realization of children's rights.

10. The report is based on the work undertaken by the Special Rapporteur and her predecessors, including through country visits; on reports and studies of United Nations human rights mechanisms and agencies, and other regional and international organizations, including non-governmental organizations; and on academic research.

B. Framework and concepts

1. International and regional standards and instruments

11. Major international standards and instruments related to the sale and sexual exploitation of children devote significant attention to prevention and provide guidance on the types of measures, processes and partnerships States are expected to undertake in order to avoid and mitigate harm.

12. The Convention on the Rights of the Child obliges States to take "all appropriate national, bilateral and multilateral measures" to prevent the sale and sexual exploitation of children, emphasizing its transnational nature. The Optional Protocol on the sale of children, child prostitution and child pornography contains a specific section on prevention, which specifies the nature of those measures.

13. Other main international legal instruments include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, International Labour Organization (ILO) Convention No. 105 (1957) concerning the Abolition of Forced Labour and ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993).

14. Relevant regional legislation in this regard includes the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the African Charter on the Rights and Welfare of the Child, the Inter-American Convention on International Traffic in Minors, and the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The European Union has adopted a number of

[1] See, for example, Joan Durrant, "From mopping up the damage to preventing the flood: the role of social policy in preventing violence against children", *Social Policy Journal of New Zealand*, No. 28 (2006).

directives in order to reinforce the protection of children against sexual exploitation, including directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography.

15. Additional relevant international commitments, namely the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2008), the Yokohama Global Commitment (2001), and the Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children (1996), underline the critical value of prevention.

2. Defining prevention

16. Prevention focuses on interventions that aim to avoid harm or mitigate its effects and ensure that children who have already been the victims of violations are not revictimized. It consists in influencing current behaviour and conditions in order to alter future outcomes.[2]

17. Child protection literature and practice identify three main layers of prevention:

(a) Primary prevention focuses on the entire population and consists in the provision of universal quality social services that reduce the likelihood of future problems;

(b) Secondary prevention concentrates on specific groups or children which are known to be more at risk by providing additional, targeted, support services;

(c) Tertiary prevention consists in services targeting perpetrators and/or victims in order to limit the effects of the violation and prevent reoffending.

18. Addressing these layers requires a combination of actions that are at once proactive and reactive, universal and targeted.

19. Prevention is integral to an effective, rights-based child protection system. The 2008 UNICEF Child Protection Strategy (E/ICEF/2008/5/Rev.1) defines a child protection system as the coordinated set of laws, policies, regulations and services needed across all social sectors — especially social welfare, education, health, security and justice — to support prevention and response to protection-related risks. It coexists and intersects with numerous other systems, such as social protection, education, health and justice, which all influence children's lives and underlines the continuum between response, promotion and prevention.[3] A systems approach focuses on the linkages between the child protection system and the economic, social, political and cultural context in which it operates. The status of children in turn influences how the system functions over the long term.[3]

20. From a practical perspective, this means that preventive measures need to address a range of child rights issues, namely the overall environment for child protection and its nexus, through multiple policy sectors.

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[2] M. W. Stagner and J. Lansing, "Progress toward a prevention perspective", *The Future of Children*, vol. 19, No. 2 (2009).

[3] F. Wulczyn and others, working paper entitled "Adapting a systems approach to child protection: key concepts and consideration" (UNICEF, UNHCR, Chapin Hall at the University of Chicago, Save the Children, 2010).

3. Vulnerability of children

21. Effective prevention seeks to reduce the vulnerability of children to sale and sexual exploitation. The concept of vulnerability generally refers to potential harm caused by certain facts or situations.

22. Vulnerability is a function of:

(a) The risks to which children are exposed, namely, the likelihood for a child to enter in harmful situations. It includes the various elements that determine the context in which the child evolves, namely, political, institutional, cultural, legislative, socioeconomic, environmental and globalization context;

(b) The ability of the child to resist these risks and/or mitigate their effects, in other words, the child's resilience.[4]

23. The above-mentioned two dimensions are closely interrelated. They depend on the strength of the protective environment around children.

24. An understanding of the different kinds and levels of vulnerabilities faced by children in diverse situations is a corner stone of an adequate preventive strategy.

25. "Push factors" focus on the child in a given context and situation. They highlight the failure of the environment to protect children and the reasons why children may be driven or "pushed" away. Risks arise from the situation of the child him or herself, the child's immediate environment such as the family or the community, or the broader political, social, economic, institutional and cultural context. The vulnerability of a child depends on social norms within the community, the availability of adequate social services, and the adaptation of the environment to his or her needs, among other factors.

26. "Pull factors" refer to the elements that draw children into exploitative situations. They include both the reasons why some children may be lured into sexual exploitation and the demand side that creates conditions for harm. New technologies, globalization, criminal networks and external shocks, such as economic crises, conflicts or natural disasters, all affect the nature of risks and the exposure of children to them.

27. Pull factors are closely related to push factors. They are interdependent and together determine the vulnerability of children. They also help to define relevant approaches to building and strengthening a protective environment. It is therefore important that prevention strategies be constantly adapted to local contexts and the changing nature and extent of risks. Strategies need to take a systemic approach and envisage the coordinated strengthening of protective factors and the mitigation of risk factors, including through social norms, laws, policies, and services.

C. Better understanding and knowledge of the multiple risk factors

28. Some factors affecting vulnerability are related to specific characteristics of the child or group of children. Nevertheless, such characteristics become risk factors

[4] D. Wenke, "From child protection to a child rights based state: strengthening, protecting and encouraging by comprehensive implementation of the Convention on the Rights of the Child" (UNICEF Switzerland, 2010).

when they are embedded in a broader pattern of discrimination and exclusion within society. The exposure of children to risk is a function of the way a child's specific characteristics play out in a given social and institutional environment. The broader environment may put children in specific situations that expose them to increase risk.

1. Profile and status of the child

29. The vulnerability of an individual child is influenced by various characteristics. A child is exposed to different kinds of risks, depending on age and development, hence the importance of a life course approach.

30. A gender perspective highlights the fact that boys and girls face different types of risks. Girls often face discrimination in accessing social services. In many societies, the right of girls to education is compromised owing to their unequal status, depriving them of an important protective element. Gender-based violence is a common feature across societies and is exacerbated in times of conflict and crisis. The sexual exploitation of girls has become a weapon of war, making victims subject to stigmatization and marginalization within their own communities. Boys are not immune to abuse. The exploitation of boys, including for prostitution, is often taboo, especially where homosexual relations are concerned, making prevention strategies even more difficult.

31. Further attributes that influence vulnerability include disability or belonging to a cast, ethnic minority or indigenous people. Such groups tend to face high levels of discrimination and multiple obstacles to reaching social services and enjoying economic opportunities.

32. Owing to various hardships in their environment and a lack of safety nets, children might find themselves in situations that make them particularly vulnerable.

33. Lack of birth registration is another significant risk factor since it makes a child officially invisible. It also constitutes a barrier to accessing the social services that are critical for prevention, including health and education.

34. Children living and working on the street lack the protective environment to counter potential traffickers and exploiters and may be forced into exploitative situations, including for survival. Girls belonging to gangs can be subject to sexual violence and exploitation by male gang members. Child labourers, particularly girls engaged in domestic work, are vulnerable to exploitation. Child migrants, especially children migrating on their own, are easy prey to traffickers. Furthermore, when migrating to new places, children and families often leave behind social support networks, which provide protection. Children in institutions are also at increased risk. In many countries, institutions are neither registered nor monitored, making children particularly vulnerable to abuse and exploitation without access to a remedy.

35. Children living in difficult conditions are likely to be tempted by the prospect of living independently, in a bigger city, and earning money and sending money home. Especially for older children, the search for a better life and economic opportunities can prompt risky choices. They may be more prone to accepting solicitations by brokers and potential employers or to migrating on their own, all of which expose them to trafficking and exploitative situations. Some children may also engage in risky behaviours, such as the consumption of drugs and alcohol and

involvement in criminal gangs. Vulnerability is primarily relational. It is highly dependent on the child's situation in a given context, namely, environment, social norms and a variety of possible shocks. An individual child's characteristics only become a source of vulnerability if the child's environment fails to provide a protective framework or contributes to exposing the child to risk.

2. Lack of a protective environment

Family environment

36. The vulnerability of children is also a function of their primary caregivers' vulnerability. The family represents the first layer of a protective environment. The family is not limited to biological parents, but includes the extended family and community, as provided by local custom, the foster family, the adoptive family, legal guardians and other persons responsible for the child. When families cannot fulfil their protective role, children are particularly exposed.

37. The reasons are multiple. Parents or other primary caregivers may be absent owing to illness and death, a decision to migrate and leave children behind, work obligations, a divorce or separation, or because they have abandoned the child. They may struggle with difficult conditions and be unable to ensure protection for children and meet their basic needs. Poverty, unemployment, disease, disability and difficulty in accessing social services as a result of discrimination and exclusion affect the ability of parents to care for their children. Families may feel powerless to deal with the problems faced by their children. Communication may be hampered by a lack of intergenerational understanding. Other dysfunctions, such as mental or behavioural disorders, conflict, substance addiction and domestic violence, weaken the capacity of families to provide a harmonious and protective environment and make children more likely to engage in risky behaviours in order to escape an unwelcoming context. Often, the same family experiences multiple strains simultaneously.

Sociocultural environment: community and social norms

38. The 2006 *World Report on Violence Against Children* highlighted that the community is an essential dimension of a protective environment for children. The community comprises both the physical environment and the social norms surrounding children.

39. The physical environment can be an important protective — and risk — factor. The design of public places can create spaces where children are particularly at risk of being abused. Quality of life conditions and the availability of social services are essential elements for stable families and communities.

40. Communities can offer safety nets that support children in difficult situations. The willingness of, and coordination among, community actors to protect children can compensate for the weakness of public institutions. Religious communities can play a protective role by supporting the most vulnerable, having access to family spheres, helping to solve conflicts and promoting a culture of non-violence.[5] Protective social norms, such as importance awarded to education, the promotion of

[5] UNICEF and Religions for Peace, "Conflict, child protection and religious communities: a review and recommendations on enhancing protection through partnership" (July 2010).

responsible sexual behaviours and intergenerational communication, can help to prevent risky conduct.

41. However, the family and community can be affected by external factors that weaken endogenous protection mechanisms and expose children to risk. In addition to various social issues, these include rapid urbanization, political instability, environmental insecurity and large-scale population movement.

42. Social norms, attitudes and behaviours have significant implication for the sale and exploitation of children. They can increase vulnerability, especially when they lead to discriminatory practices, gender bias, harmful practices and the social acceptance and underreporting of violations. They also influence the functioning of formal institutions and good governance, including public accountability (see E/ICEF/2008/5/Rev.1).

43. Social norms vary significantly across geographic locations and, in many instances, among various groups within a given society.

44. Social standards determine to a large extent the perception of childhood in society. Although the Convention on the Rights of the Child defines a child as a person under 18, communities may consider that pre-puberty signs actually constitute the passage to adulthood, with the social expectations it implies. As a consequence, child victims of sexual exploitation may be seen as guilty of inappropriate behaviour or poor upbringing.

45. A number of social practices are rooted in discrimination against women. Child marriage is entrenched in social and gender norms that significantly affect the well-being of girls.

46. Social norms can make a number of child rights violations acceptable and not recognized as violations. For example, child marriage for the payment of a high dowry is a form of sale, although in some societies it may be considered culturally acceptable. Transactional sex, in which sexual favours are exchanged for other favours, may not be immediately identified as prostitution. Violence against children may be seen as an educational practice. Customary law may also lead to arrangements between families "settling" cases of child sexual violence and exploitation without respect for the rights of the victim.

47. Social norms within children's own communities — through their peers — can also constitute significant risk factors. In the context of exchanges with peers or of relationships, children, especially adolescents, may be tempted to put so-called "self generated indecent images" online, which may then be further disseminated through social media. Children may also make themselves vulnerable through online behaviours that are then exploited by criminals through grooming on the Internet and blackmailing online.[6] Consumerism may draw children into exploitative situations so that they are able to buy specific goods. Early sexualization, conveyed through media and peers, may contribute to risky attitudes and distort perceptions by both children and adults of the criminal nature of child sexual abuse and exploitation.

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[6] UNICEF Innocenti Research Centre, *Child Safety Online: Global Challenges and Strategies* (Florence, Italy, May 2012); see also Child Exploitation and Online Protection Centre, *Threat Assessment of Child Sexual Exploitation and Abuse* (London, June 2012).

48. Underlying attitudes about male entitlement and masculinity can foster the perverse notion that it is acceptable for men to sexually exploit children, either in their own countries or abroad. Such attitudes are further reinforced when buying sex from a child is socially acceptable and entails neither social stigma nor serious legal punishment.

49. Such social norms are mutually reinforcing and contribute to strengthening social tolerance for the sale and sexual exploitation of children. Gradually, the sexual exploitation of children may become a banal and acceptable phenomenon. Such evolutions do not only tear down the protection offered by the community, which becomes complicit in crime, but also affect the functioning of public institutions, when the police and the judiciary refrain from taking action due to the perceived permissibility of such practices.

Legal, political and institutional environment

50. The legal, political and institutional environment, hence the overall governance context, plays a major role in preventing or facilitating the sale and sexual exploitation of children. When the legal framework is incomplete, formal institutions are weak and there is no political will and leadership to address the issue, preventive measures will go unheeded, social services will remain inefficient and underresourced, child-sensitive remedies will be non-existent or inaccessible and offenders will continue to operate without fear of being troubled. The effectiveness of child protection systems relies on the broader governance systems incorporating them. All areas of governance have major consequences for the realization of children's rights.[7]

51. An incomplete legal framework, failing to criminalize all forms of sale and sexual exploitation of children, and all roles in the offence, means that offenders will remain unpunished and not deterred from doing harm. Furthermore, laws have an influence on social norms and what is considered acceptable in society.

52. Weak law enforcement, owing to lack of capacity or corruption, leads to a culture of impunity, paving the way for organized crime and the permissibility of abuse. When laws, even where they exist, are not enforced, social tolerance for exploitation is likely to increase.

53. Weak governance has additional effects. In many countries, regulations on institutional care, including norms, the registration and monitoring of centres, do not exist or are not enforced, putting children in care at high risk of abuse and exploitation. Insufficient human resources, owing to insufficient budget allocation and inadequate training, may thwart efforts to identify children at risk or action to prevent harm. Likewise, inefficiencies within agencies responsible for prevention, as a result of ineffective coordination and lack of political leadership, affect their ability to fulfil their mandate.

54. Lack of awareness of legislation is a major deficiency in the protection of children from sale and exploitation. In many instances, the public, teachers, children, as well as law enforcement officials, are unaware that certain acts constitute criminal offences. Typically, sexual exploitation may not be seen as a

[7] UNICEF Innocenti Research Centre, *Child Rights and Governance Roundtable, Report and Conclusions* (Save the Children, Organization for Economic Cooperation and Development, UNICEF, 2011).

crime when it is deemed "consensual". This also has consequences on the ability of children to claim their rights and to access remedies.

55. Access to remedies for child victims or those at risk remains a significant challenge. Counseling, reporting and complaint mechanisms are frequently unavailable or difficult to reach. Limited access to justice for children, especially the most vulnerable, is often the result of a lack of child-sensitive rules and proceedings, and inadequate staff specialization. Research on independent human rights institutions for children has pointed to the limited accessibility of such institutions to children across regions. Independent institutions also meet with significant difficulties in monitoring the situations of children in closed settings.[8] Children may simply not know that remedies exist and how to access them. In particular, in situations where governance systems are fragile, children may not trust existing mechanisms and may think that complaining will be useless if, for example, institutions in the country are regarded as inefficient. They may fear stigmatization, public exposure and reprisals, and worry that they will not be listened to or believed. Because abuse is often committed by people in their immediate environment, children may be hesitant to file a complaint against someone they know.

Socioeconomic environment

56. Poverty is too often considered the primary cause of the sale of children, child prostitution, and child pornography. Poverty does have an impact on families and communities by creating stresses that weaken the family and social fabric and driving children away from their homes in search of better opportunities. However, poverty alone is not the sole driver of the sale and exploitation of children. Children in equally poor situations may not be at similar risk of exploitation. Research has shown that child victims of exploitation are typically from families experiencing high levels of poverty and single or persistent negative shocks, such as drought, loss of employment, death or the severe illness of a family member.[9] The "poverty plus" approach underlines that poverty combined with other risk factors increases vulnerability.[10]

57. Poverty is not merely a monetary, absolute concept. Relative poverty emphasizes the fact that poverty is defined within a given context. It highlights the disparities that may exist within the same country or area, in particular between urban and rural areas, but also in the same location. Poverty is further defined in terms of the deprivation of basic needs, such as shelter, water, education, sanitation, information, and health. Poverty therefore stems from a lack of access to social services.[11] It is closely correlated with social exclusion and the inability of the State and community to fulfil children's rights.

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[8] UNICEF Office of Research — Innocenti, *Championing Children's Rights: A Global Study of Independent Human Rights Institutions for Children* — Summary Report (Florence, Italy, 2012).

[9] UNICEF Regional Office for West and Central Africa, "Promoting synergies between child protection and social protection" (UNICEF and Overseas Development Institute (ODI), 2009).

[10] ILO, UNICEF, United Nations Global Initiative to Fight Human Trafficking, *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation* (Geneva, International Labour Office, 2009).

[11] D. Gordon and S. Nandy, "Measuring child poverty and deprivation", in A. Minujin and S. Nandy (eds.), *Global Child Poverty and Well-being: Measurement, concepts, policy and action* (Bristol, United Kingdom, The Policy Press, 2012).

58. Poverty and deprivation can lead communities, families and children to adopt coping mechanisms involving children in income-generating strategies. Unless adequate protective mechanisms are in place, these strategies can expose children to exploitative situations, which may become justified as inevitable.

Environmental factors

59. Shocks in the broader context may also contribute to putting children at risk. Drought or conflict, for instance, may break down governance systems, disrupt families and drive families and children away from their environment, increasing their vulnerability. Studies on the impact of climate change and natural disasters on children have underscored their effects on the sale and sexual exploitation of children.[12]

3. Increased demand

60. The sale and sexual exploitation of children are largely demand driven. Demand creates the conditions for exploitation.

61. Demand is a function of various dimensions. Although growth is often understood as a positive development that reduces exposure by lowering poverty, it can also introduce new risks.[13] Increased wealth in some areas may create new local demands for child prostitution and other forms of sexual exploitation.

62. Sex tourism is a case in point. The development of tourism in certain areas has prompted a demand for transactional sex, putting children at risk of prostitution and sexual exploitation. The increased availability of cheap travel, the growth of international tourism and discrete online booking, further facilitate those deeds.

63. Contrary to popular misconceptions, in which the demand for sex with children is seen as coming from pedophiles alone, the demand is mostly generated by people who pay for sex. There is therefore no specific profile of the child sex exploiters since they can be from different socioeconomic backgrounds and professions, and include nationals and foreigners alike.

64. Increased integration of a country into the global economy facilitates organized crime. Transnational criminal companies use the tools offered by globalization — for registration and financial transactions — to develop lucrative activities involving the sex industry and creating new risks for the sexual exploitation of children through trafficking and pornography.

65. Although they provide tremendous positive opportunities, communications technologies, including the Internet and mobile phones, represent major vehicles through which the sale of children, child prostitution and child pornography are facilitated. Estimates indicate that millions of images of child abuse circulate on the internet, depicting tens of thousands of individual children,[14] and these images are increasingly shocking. The use of specific instruments, such as peer-to-peer

[12] See, for example, K. Harris and K. Hawrylyshyn, "Climate extremes and child rights in South Asia: a neglected priority", Project Briefing No. 78, (ODI and Plan International, October 2012).

[13] J. Kaplan and N. Jones, "Protect my future: the link between child protection and employment and growth — in the post-2015 development agenda" (ODI, May 2013).

[14] UNICEF Innocenti Research Centre, *Child Safety Online: Global Challenges and Strategies* (Florence, Italy, December 2011).

networks, has made it easier to exchange pornographic material. There has also been a significant increase in grooming children on the Internet for sexual purposes through chat rooms, social networking sites and instant messaging. Once online, images can rarely be deleted and keep circulating. It is therefore essential that the wide array of private actors that operate in this field be included in the design and implementation of preventive tools.

66. The demand for adoption has augmented concomitantly with a decrease in adoptable children, creating conditions for abuse, corruption, excessive fees amounting to sale, and the illegal adoption of children. Data from European countries shows that there has been a decrease since 2004 in intercountry adoptions, in particular owing to better child health, effective family policies, the strengthening of legal and institutional frameworks and the concerns of countries for their international image. Conversely, demand for adoption has not dropped, creating an environment conducive to abuse and leading to pressure on countries of origin, including through excessive costs by adoption agencies, briberies and corruption.[15]

D. Effective and sustainable prevention

67. The complex nature of vulnerability calls for a holistic approach to prevention that takes into account the multiplicity of risk factors at the local, national and transnational levels, and targets the most vulnerable children, while ensuring a protective environment for all. The approach builds on the interdependence and indivisibility of all children's rights and involves a vast array of stakeholders that need to coordinate their action effectively. Distinct preventive measures can only be effective in conjunction with one another. They are all indispensable and interrelated elements of the protective chain and are integral to child protection systems.

1. Reliable and effective legal framework

68. The normative framework plays a critical role in prevention. Laws and regulations represent the foundation of child protection systems. It is therefore critical that the legal framework encompass all forms of the sale of children, child prostitution and child pornography in order to prevent offenders from using legal loopholes as a leeway for criminal activities. Such a legal framework would also encompass a condition for victims to be recognized as such and enable them to benefit from remedy, assistance and redress.

69. The first step is to ensure that legislation properly reflects the definitions formulated in international standards, including their child-specific aspects. The legal framework must incorporate all relevant provisions under civil, criminal and administrative law in order to guarantee that offenders are punished and victims adequately protected. Provisions in relation to the age of the victim need to ensure that children, including adolescents, enjoy appropriate protection. International instruments provide crucial guidance on the legislative measures to be adopted to address the sale and exploitation of children. The Optional Protocol on the sale of children, child prostitution and child pornography obliges States parties to ensure

[15] European Network of National Observatories on Childhood, *National Experiences on the Management of the Demand for Intercountry Adoption* (Florence, Italy, ChildONEurope Secretariat, 2012).

that, as a minimum, the list of offences contained in the Protocol are fully covered under domestic criminal law. The Optional Protocol also requires extraterritorial jurisdiction to address such crimes. It further requires the prohibition of the production and dissemination of material advertising the offences. It provides for the rights of victims to assistance, redress and compensation.

70. Similarly, laws on national and intercountry adoption need to be in line with the relevant provisions of the Convention on the Rights of the Child and the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. They need to be complemented with adequate bodies for accreditation and the monitoring of practices.[16]

71. The Protection Project at Johns Hopkins University and the International Centre for Missing and Exploited Children have developed a model law for child protection, building on best practices from 68 countries across the world. A specific chapter is devoted to various aspects of child sexual exploitation.[17] The Special Rapporteur has also provided in her reports clear guidelines on comprehensive legal frameworks for integrating child protection systems (see, for example, A/66/228).

72. Access to justice for children is an important dimension of prevention. An effective judiciary and strong rule of law deter criminal offences. They prevent reoffending by taking action against criminals. They also help to ensure that children and families can claim their rights and entitlements, including in relation to the fulfilment of their economic and social rights, such as benefits and access to health and education, which are essential to reducing vulnerability.

2. Child-sensitive complaint mechanisms

73. Access to child-sensitive remedies is a core element for the prevention of the sale and sexual exploitation of children. Such remedies include the justice system, independent human rights institutions for children, such as human rights commissions, ombudspersons and child advocates, and community-based mechanisms.

74. Independent human rights institutions for children can play an important role in prevention. While criminal proceedings require the commission of an offence before they can act, independent institutions have the possibility to take action before harm happens. They can do so through their complaint mechanism, by addressing individual cases in which a child may be at risk. They also have an important function in monitoring settings, such as care institutions, schools and detentions centres, where children may be at particular risk of abuse. Community-based mechanisms can also support access to remedies.

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[16] Hague Conference on Private International Law, *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice* (2008).

[17] The Protection Project and International Centre for Missing and Exploited Children, "Child protection model law: best practices — protection of children from neglect, abuse, maltreatment and exploitation" (Johns Hopkins University, January 2013).

3. Protective social norms for children

75. Social change is a major instrument in the prevention of the sale and sexual exploitation of children. Research has shown however that increased awareness of risks does not automatically lead to fewer instances of risky behaviour, unless behaviour change is perceived positively. Behaviour change therefore relies on the existence of an opportunity, ability and skills, and incentives. It needs to involve potential victims, as well as communities, exploiters, policymakers and customers.[18] The media, including social media, can play a significant role in conveying information and messages regarding social norms and in contributing to changing attitudes.

76. In many instances, endogenous social norms act as a shield against the sale and exploitation of children. The values communities abide by, including unacceptability of some behaviours and importance awarded to education, can be powerful protective factors. Community leaders, especially elders, can play an important role in monitoring and addressing the exposure of children to risk. However, little research has been undertaken to identify endogenous protective practices and build on them to enhance protection and resilience. This is an area that holds significant potential and would benefit from receiving greater attention.

4. Social policies, strengthening of the family and access to social services

Support for families

77. When parents are able to care for their children, provide for their needs and offer a harmonious environment for their development, children are less likely to be abandoned, run away from home or adopt risky behaviours.

78. Family policies and support for parenting, in particular, are therefore critical to addressing risk factors for the sale and exploitation of children. The Convention on the Rights of the Child and the Guidelines for the Alternative Care of Children (resolution 64/142, annex) emphasize the importance of family support, including in addressing the root causes of the separation of children from their families.

79. Measures aimed at strengthening families are broader than cash transfers and other forms of financial support. They include a wide array of services ranging from housing to childcare and psychosocial support and counselling. Family strengthening has positive effects beyond the protection of children from exploitation; it is also beneficial for the socioeconomic development of societies as a whole.[19]

Social protection

80. The links between social protection and child protection have received increased attention as an important approach to prevention. Social protection includes four main sets of tools:

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[18] P. Marshall, "Rethinking trafficking prevention: a guide to applying behaviour theory" (Asian Development Bank, Coordinated Mekong Ministerial Initiative against Trafficking and United Nations Inter-Agency Project on Human Trafficking, 2011).

[19] See Save the Children, Strengthening Families: Save the Children Programs in Support of Child Care and Parenting Policies (Stockholm, 2012); and Eurochild, Early Intervention and Prevention in Family Support and Strengthening: Compendium of Inspiring Practices (October 2012).

(a) Transfers to poor children and households over the long run, such as cash transfers, school feeding programmes and free access to health services;

(b) Social services for marginalized children;

(c) Social insurance to protect children and families against shocks;

(d) Social equity measures to protect children and families against discriminatory practices and their impact.[20]

81. Using a human rights-based approach, the Social Protection Floor Initiative, a United Nations joint initiative led by ILO and the World Health Organization (WHO), acknowledges the importance of social justice for human dignity and social cohesion and emphasizes the right of everyone to an adequate standard of living, paying particular attention to vulnerable groups and the protection and empowerment of people across the life cycle. This includes (a) universal access to social services; and (b) transfers in cash or in kind to ensure minimum income and livelihood security.

Birth registration

82. Birth registration is an important protective mechanism. It ensures that the child's existence is recorded and provides evidence of the child's age and nationality. Obstacles to birth registration are multiple. They range from lack of awareness and incentives, to geographical, ethnic and social, economic, and legal barriers. They also include complex bureaucratic procedures.[21] A primary requirement is adequate legislation, making birth registration free and mandatory, with relevant time limits enabling people in remote areas to access the registry. Legislation needs to encourage the use of birth certificates, rather than focus on penalties as an incentive. It is also important to address possible discriminatory provisions, such as the ability for women to register the child and acceptance of names belonging to a minority or indigenous culture.[22]

Access to quality schooling

83. Access to quality education represents a significant preventive measure. As highlighted by the Committee on Economic, Social and Cultural Rights in its General Comment No. 13, education plays a vital role in safeguarding children from exploitative and hazardous labour and sexual exploitation. Children in school are in a protected environment. Socialization and the presence of adults make them part of a protective network, where vulnerable children can be identified and the absence of children noticed and reported. Yet, lack of awareness of what constitutes abuse and a lack of available remedies can pose major limitations. For this reason, teachers need to be trained to identify vulnerabilities and take action to prevent and report abuse. For the education system to retain children, schools must be accessible, and the education provided must be of high quality and geared towards building relevant skills for future employment.

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[20] Nicola Jones and Rebecca Holmes, "Tackling child vulnerabilities through social protection: lessons from West and Central Africa", Background note (ODI, July 2010).

[21] Claire Cody, *Count Every Child: The Right to Birth Registration* (Plan International, 2009).

[22] UNICEF Innocenti Research Centre, "Birth registration: Right from the Start", *Innocenti Digest*, vol. No. 9 (March 2002).

84. The school is also a central setting for sensitizing children to the risks of sexual exploitation. Incorporating child protection issues into school curricula enables schools to provide children with the tools to protect themselves from abuse and exploitation.

85. An existing challenge, however, concerns the fact that sexual exploitation can also occur in schools. Appropriate policies and mechanisms need to be in place in order to prevent and report abuse within the school.

5. Cross-sectoral coordination and cooperation

86. The multidimensional nature of child vulnerability to sale and sexual exploitation requires significant cooperation among actors operating in diverse sectors and at various levels — local, national and transnational, public and private — for effective prevention. Effective prevention requires specific efforts, structures and incentives.[23]

Coordination at the domestic level

87. The various preventive measures need to be integrated and coherent, hence the importance of adopting a comprehensive strategy and going beyond legalistic aspects.[23] The role and responsibilities of each actor/institution, as well as accountability mechanisms have to be clearly established. Yet, political will and leadership are also critical to ensuring that coordination is achieved.

Transnational cooperation

88. The highly transnational nature of the sale and sexual exploitation of children, which frequently entails children being transferred from one country to another and often involves transnational criminal networks, calls for coordinated preventive measures across countries, in particular neighbouring countries. Compliance with international standards plays an important role in ensuring a common understanding of the nature of the crimes and fosters cooperation among countries.

89. Transnational cooperation may be bilateral or multilateral. It often, but not exclusively, takes place among countries within the same region or subregion. Cooperation ranges from border control and the verification of travel documents to cooperation among law enforcement authorities and joint preventive programmes, including harmonization of legislation, sharing of information and learning from good practices.

90. INTERPOL supports the exchange of information among law enforcement authorities across countries. It has set up a system of "green notices", issued to provide warnings and criminal intelligence about perpetrators, who are likely to repeat crimes in other countries. INTERPOL also coordinates joint operations between multiple countries to track down offenders.[24]

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[23] B. Guy Peters, "Governance and the rights of children: policy, implementation, monitoring", UNICEF Office of Research Working Paper (June 2012).

[24] See http://www.interpol.int/en/Internet/Crime-areas/Crimes-against-children/Sex-offenders.

6. Child empowerment and participation

91. Hearing children's views is a state obligation under the Convention on the Rights of the Child. It is also critical to make prevention effective by identifying the concrete problems children face and designing adequate solutions. It also plays an important role in helping to break taboos, question social acceptance of abuse and influence social norms. Children can play an active role in sensitizing their peers on risky behaviours and the realities of sexual exploitation. By supporting children to exercise of their rights, child participation also contributes to their empowerment, enhancing their ability to resist exploitation, report violations, and builds resilience.[25] In its General Comment No. 13, the Committee on the Rights of the Child has highlighted that children need to be fully involved in prevention strategies for their protection from violence.

92. Specific activities to promote child participation in order to prevent sale and exploitation include:

(a) Information campaigns and access to information through the media, the Internet and hotlines;

(b) Awareness-raising with parents to address possible discrimination against girls and to promote the child's right to be heard;

(c) Development of professional codes and training;

(d) Development of complaint procedures, including in institutions where children spend time;

(e) Involvement of children in research on prevention;

(f) Avenues for participation that are age and gender appropriate and accessible for children with disabilities.[26]

7. Child protection during humanitarian crises

93. During humanitarian crises following natural disasters or climate-related catastrophes, child-friendly and safe spaces should be established in temporary shelters or camps where every child can rest and play with a sense of normalcy and receive care and support under the supervision of trained professionals and appropriate security. Temporary shelter arrangements and the delivery of basic services should be established with a view to avoiding the accidental separation of children from their families.

94. National or international adoptions should not be permitted until a determination has been made by the State or appropriate authorities regarding the legal eligibility, psychological, medical and social suitability of the child to be adopted.

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[25] Carolyn Willow, *Children's Right to be Heard and Effective Child Protection: A Guide for Governments and Children's Rights Advocates on Involving Children and Young People in Ending All Forms of Violence* (Sweden, Save the Children, 2010).

[26] Gerison Lansdown, *Every Child's Right to be Heard: A Resource Guide on the United Nations Committee on the Rights of the Child General Comment No. 12* (London, Save the Children UK and UNICEF, 2012).

8. Strategies to tackle demand

Adoption

95. Strategies to prevent illegal adoptions include better cooperation between receiving countries and countries of origin, especially with respect to applications, through operational protocols and guidelines in order to ensure joint responsibility.

96. In adoption processes, priority should be given to relatives or individuals within the child's community or culture. International adoption should only be undertaken as a last resort and in compliance with the 1993 Hague Convention on Intercountry Adoption.

97. Limiting the number of adoption agencies is also an important step. Furthermore, information sessions in receiving countries for prospective parents play an important role in curbing the demand for adoption.[15]

Sexual exploitation

98. Addressing demand for child sexual exploitation implies a combination of interventions ranging from law enforcement to social change. Strategies include:

(a) Changing attitudes towards the use of prostitution, especially building on the feeling of guilt reported by buyers of sex, addressing concepts of masculinity and engaging men as full actors in attitudinal change;

(b) Shaming buyers by publicizing names and pictures of offenders, bearing in mind that such strategies need to protect the rights of victims, in particular in respect of privacy and confidentiality;

(c) Prosecution of perpetrators, owing to adequate legal frameworks and effective law enforcement mechanisms;

(d) Efforts targeted at young people in order to educate them on the consequences of their actions;

(e) Awareness-raising programmes for sex buyers;

(f) Codes of conduct for staff of international organizations, Governments and the military, including peacekeepers, comprising the duty to report abuse and exploitation.[27]

99. Targeting offenders is a particularly critical mechanism in deterring recidivism. Actions in that respect include sociotherapeutic treatments for sex offenders and increased security measures, adequate evaluations of alternatives to punishment, and strict reporting practices when perpetrators are released into the community.[28]

9. Effective corporate social responsibility

100. The involvement of the business sector needs to be integral in prevention strategies. The Committee on the Rights of the Child has issued General Comment

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[27] Ruth Rosenberg, "Tackling the demand that fosters human trafficking: final report" (USAID, August 2011).

[28] ECPAT International, "Guide for national planning: To prevent, stop and redress violations of commercial sexual exploitation of children" (2009).

No. 16, on State obligations regarding the impact of the business sector on children's rights, and which sets out measures to be taken by State parties in that regard.

101. Corporate social responsibility has received increased attention in recognition of the business sector's role in upholding and promoting human rights.[29] In that context, the Children's Rights and Business Principles (2012) developed by UNICEF, the United Nations Global Compact and Save the Children, highlight the double nature of the role of the business sector with regards to children's rights:

(a) The corporate responsibility to respect the human rights of others, including children, by avoiding infringements and addressing the human rights impact of business activities;

(b) The corporate commitment to support children's rights through voluntary actions such as business activities, social investments and philanthropy, advocacy and public policy engagement, and involvement in collective action.

102. Both dimensions are of decisive relevance for the prevention of the sale and exploitation of children.

Child safety online

103. In several countries, laws establish the responsibility of Internet service providers, in particular through penalties for such providers and domain hosts who do not report child pornography to the police, and obligations for Internet service providers to prevent the dissemination of child pornography material and report cases and abuser's data to the police.

104. In response to risks, various strategies have been adopted for prevention, including hotlines established by States, non-governmental organizations and Internet service providers. Some have an international scope, such as the Association of Internet Hotline Providers, a network of 44 hotlines in 38 countries, where the public can report child sexual abuse.[30] Several websites used by children have also added abuse alert buttons for children to report illicit content or sexual solicitation.

105. A number of Internet service providers and mobile phone operators have adopted codes of conduct for self-regulation. In 2007, leading mobile phone operators and content providers in the European Union signed the European Framework for Safer Mobile Use by Younger Teenagers and Children, committing to filtering content, carrying out awareness-raising campaigns and classifying commercial content for decency.[31]

106. Search engines also contribute to eradicating child abuse images online. Since 2008, Google has identified duplicates of abuse images online. It has recently started to incorporate encrypted "fingerprints" of child sexual abuse images into a

[29] See Office of the United Nations High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (New York and Geneva, 2012).

[30] See http://www.inhope.org/gns/about-us/about-inhope.aspx.

[31] UNICEF Innocenti Research Centre, *Child Safety Online* (see footnote 14).

database to support collaboration among companies, law enforcement authorities and charities.[32]

Involving the financial sector

107. The sale and sexual exploitation of children is very lucrative. One way to prevent crime and identify offenders is by impeding financial flows and money-laundering activities by perpetrators, who use wire remittance services, money transfer services, cash couriers, false identification documents and cash sent by different persons to the same recipients as laundering techniques.[33] Cooperation with the financial sector is therefore critical.

108. The Financial Coalition against Child Pornography in the United States of America, for example, is an alliance between the public sector and leading banks, credit card companies, electronic payment networks, third party payments companies and Internet service companies, which together representing nearly 90 per cent of the payment industry in the country, aiming to combat child pornography. The model has expanded worldwide. A similar coalition was created in the Asia and Pacific region. In 2012, the European Financial Coalition against Commercial Sexual Exploitation of Children Online was launched, with support from the European Commission.

Responsible tourism

109. The tourism and travel industry — airline companies, hotels and other services used by travelers — is an important partner in the prevention of child sexual exploitation.

110. The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism was sponsored by ECPAT following the World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996. It is an industry-driven, multi-stakeholder initiative. Signatories commit to taking a set of actions to prevent child sexual exploitation, including ethical policies, staff training, special clauses in contracts with suppliers and information for travelers and locals involved in the tourism industry. Currently, more than 1,000 companies, including leading travel and tourism companies, are members of the Code. An evaluation of the Code has found that it has been instrumental in raising the profile of the problem of sexual exploitation of children, even beyond the travel and tourism industry.[34]

10. Data and knowledge

111. In order to address the root causes of the sale and sexual exploitation of children, evidence on the extent of the phenomenon, its drivers, including the profiles of victims and abusers, and the effectiveness of responses, need to inform preventive measures. This requires solid data collection systems. However, the hidden nature and limited reporting of violations make it difficult to collect reliable

[32] Ibid.

[33] Financial Action Task Force, "Money laundering risks arising from trafficking in human beings and smuggling of migrants" (Financial Action Task Force and OECD, July 2011).

[34] UNICEF Innocenti Research Centre, "Assessing the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism: a discussion paper" (2012).

information through official systems. Therefore, data also needs to be gathered through primary, qualitative research that seeks to reveal the dynamics at stake in a given context.

112. Data on abusers is very limited. Where it exists, it points to the fact that there is no specific profile. It is very often someone the child already knows. Sex tourists, for instance, come from all walks of life, age, gender, marital status and socioeconomic backgrounds.[35]

113. Several studies have been carried out in various parts of the world to assess the nature and origin of child sexual exploitation. They often involve interviews with members of communities, including children. These studies are critical to understanding the complexity of problems and formulating evidence-based prevention strategies.

114. Research on child sexual abuse in the eastern Caribbean, for example, has helped to provide an understanding of the ways people in the area perceive sexual abuse and has highlighted the role of social norms and early sexualization in the social acceptance of abuse.[36]

115. Research on children who have been exploited or sold needs to identify the characteristics of victims, in order to identify particularly vulnerable children. Data may find that children from a specific ethnic group or from a particular geographic location are overrepresented among victims. Prevention initiatives will then have to focus on a given area and use instruments that are culturally sensitive to the group concerned.

11. Monitoring and assessment

116. Monitoring and assessing preventive interventions facilitates an evaluation of the strategies that have an impact and leads to appropriate adjustments to strengthen effectiveness. Such interventions help to build knowledge on positive practices that can be disseminated, with relevant adaptations in various contexts. Furthermore, responses to the sale and sexual exploitation of children consist in addressing specific, identifiable — even if often hidden — problems. In contrast, prevention concentrates on the possibility for harm to occur. Consequently, it is a much less tangible concept, whose effectiveness is measured by default, namely, by the actions that do not happen. Because it is less visible in political terms, it is even more important to build evidence on what works and to consistently demonstrate the relevance of actions.

117. WHO has developed a tool to assess the readiness of a country, province or community to implement prevention programmes. Although primarily focused on child maltreatment, it offers useful insights for the design of preventive strategies. The instrument aims to identify major gaps in readiness in order to address them,

[35] International Bureau for Children's Rights, "Combating child sex tourism by involving the Canadian private sector of travel and tourism and the Canadian public: raising awareness against child sex tourism in Canada — 2009-2012".

[36] Adele D. Jones and Ena Trotman Jemmott, "Child sexual abuse in the eastern Caribbean: report of a study carried out across the eastern Caribbean during the period October 2008 to June 2009 — perceptions of, attitudes to, and opinions on child sexual abuse in the eastern Caribbean".

measure progress, allocate adequate resources, ensure the relevance of interventions and raise awareness with main stakeholders.[37]

III. Conclusions and recommendations

A. Conclusions

118. **Prevention is a central aspect to the protection of children from sale and sexual exploitation, yet one that is too often neglected. Designing and implementing prevention strategies are challenging. Preventive measures need to cover a large spectrum of issues at various levels in an integrated and holistic manner. They require a supportive social, economic and cultural environment and unabated political will. Knowledge on risk and vulnerability remains limited. The identification of good practices and a clear understanding of which interventions work and why is even scarcer.**

119. **Despite many efforts undertaken at different levels by various actors, much remains to be done to prevent scores of children from being sold and sexually exploited, and child abuse materials from being produced, used and disseminated. Each day, more children become the victims of such crimes and have their childhood stolen. There is an urgent need to accelerate the development of effective and sustainable prevention measures.**

120. **Importantly, prevention approaches seek to promote systemic change that cannot happen overnight. Prevention involves processes that need to be carried out over many years. Consequently, commitment to the issue, namely political will, programme implementation, and the allocation of resources, should ensure the sustainability of efforts in the long run, including, and in particular, in difficult times.**

B. Recommendations

121. **In order to prevent the sale of children, child prostitution and child pornography effectively, there is a need to elaborate and implement integrated and holistic prevention strategies that fully take into account the multidimensional nature of vulnerability and address the multiple risk factors that come into play and expose children to sale and sexual exploitation. Such comprehensive, proactive and context-specific prevention must be an integral part of comprehensive and child rights centred protection systems, in compliance with international standards. The preventive strategies are an integral part of those systems and are built on a systemic approach to child protection that recognizes the interrelatedness of the various elements of the child protection systems, including laws, policies, regulations, and services, and the way they interact within a given sociocultural and economic context. The ultimate objective is to build a protective environment around children, by**

[37] WHO, Handbook for the readiness assessment for the prevention of child maltreatment (RAP-CM) (2013). See also WHO, "Technical report on the assessment of readiness to implement the evidence-based child maltreatment prevention programmes of Brazil, the former Yugoslav Republic of Macedonia, Malaysia, Saudi Arabia, and South Africa" (2013).

enhancing the capacity of various actors, namely, families, communities, public institutions, the private sector, the media and academia, in order to effectively protect children from harm.

122. **To that end, the Special Rapporteur recommends the following actions:**

(a) Improve the knowledge and understanding of the complex, multidimensional and evolving aspects of the sale and sexual exploitation of children, through:

(i) Conducting field studies on risk factors in specific contexts, as well as deepening an understanding of how these factors intersect and affect vulnerability. Although each situation involves a unique combination of elements, improved research on the dynamics at play among risk factors is critical to designing and advocating for effective prevention strategies;

(ii) Analysing the issue of the demand: information on the motivations of offenders and the rationale for reoffending would be essential in order to ensure that preventive measures targeting demand are relevant;

(iii) Establishing a reliable and standard information system and sharing information, with a view to allowing a regular assessment of the evolution of the situation of the vulnerable;

(b) Ratify all relevant regional and international instruments and establish a comprehensive and strong legal framework, embracing both civil and penal laws that prohibit, prevent and respond to all forms of the sale and sexual exploitation of children; Ensure easy access to child sensitive justice complaints and reporting mechanisms and establish strong and effective mechanisms to fight corruption and impunity;

(c) Ensure that children's births are registered; and ensure that vulnerable children are identified early and that they have an adequate standard of living and free access to health care and health services, education and social security;

(d) Strengthen families and reinforce their capacity to prevent the sale and sexual exploitation of children, putting in place a range of measures aimed at offering quality services, parenting support and social protection, in order to help families to overcome the difficulties they may be facing and to ensure that they receive adequate assistance to fulfil their child-rearing responsibilities;

(e) Identify and promote endogenous protective social norms in the community in order to increase community ownership and the cultural appropriateness of prevention strategies; and conduct regular awareness-raising campaigns to combat harmful social norms;

(f) Involve and empower children and youth, giving them the opportunity to have their views heard and their proposals taken into consideration in the prevention strategies;

(g) Enhance corporate social responsibility involving Internet service providers, telecommunications, financial companies, the travel and tourism industries and the media in order to strengthen child safety online and to prevent child sexual exploitation in travel and tourism;

(h) Enhance transnational cooperation by establishing a comprehensive and global legal framework, preventing, prohibiting and protecting children from sale and sexual exploitation; sharing and updating information related to child victims and offenders, establishing a global list of offenders and websites displaying child pornography, which would be constantly updated; harmonizing practices and procedures; and sharing expertise and scaling up good practices;

(i) Establish regular assessments and monitoring in order to systematically and adequately assess the impact of preventive interventions and ensure that measures effectively contribute to reducing the exposure of children to risk and victimization; ensure that logical frameworks for interventions, linking interventions to outcomes and highlighting causalities, are reviewed and assumptions questioned on an ongoing basis. and constantly refine indicators and data collection and analysis and adapt them to new forms of exploitation and abuse.

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Belarus

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, submitted in accordance with Human Rights Council resolution 20/13.

* A/68/150.

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Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus to the General Assembly at its sixty-eighth session, in accordance with Human Rights Council resolution 20/13.

In the report, the Special Rapporteur focuses on human rights in electoral processes in Belarus. He explores the patterns of purposeful and systemic human rights violations leading to Belarus being the only country in Europe that in the past decade has had no opposition members elected to its parliament.

The Special Rapporteur makes recommendations to improve the human rights situation in Belarus in line with its international obligations.

13-42001

I. Introduction

A. Background

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Human Rights Council in its resolution 20/13. The Special Rapporteur assumed his functions on 1 November 2012. On 13 June 2013, in resolution 23/15, the Council extended the mandate of the Special Rapporteur for one year.

2. In his first report to the Human Rights Council (A/HRC/23/52), the Special Rapporteur described the prevailing situation of human rights in Belarus since the establishment of the mandate and included information received up to 31 March 2013.

3. Through consultations held since November 2012, the Special Rapporteur found only scant progress in the implementation of recommendations made by the United Nations High Commissioner for Human Rights in her report to the Human Rights Council in 2012 (A/HRC/23/52, paras. 113-118). He concluded that the system of governance — decrees, legislation, policy and practice — was impeding the realization of the constitutional guarantees for the protection of human rights for all those living in Belarus. The situation of human rights — precarious in general, grave in certain areas — was clearly affected by the domination of the executive branch over the legislative and the judiciary.

4. In the report, the Special Rapporteur documented systemic and systematic violations of human rights, especially in the areas of due process, fair trial and torture, as well as freedoms of opinion and expression, peaceful assembly and association. He noted that the limitations imposed on those freedoms were further hampering the free exercise of other civil, cultural, economic, political and social rights.

5. The situation for those deprived of their liberty, in particular well-known political prisoners, is of deep concern.

B. Methodology

6. Since taking up his mandate, the Special Rapporteur has stressed his commitment to independence, impartiality and objectivity and to cooperation with all stakeholders as the guiding principles for his work. In particular, he has sought to enlist the cooperation of the Government of Belarus. The Special Rapporteur has officially addressed the Permanent Representative of Belarus to the United Nations Office at Geneva or, through him, the Minister for Foreign Affairs, to request meetings and an invitation to visit Belarus.[1] No reply to any of these communications has been received to date.

7. The Special Rapporteur regrets that the Government does not avail itself of this opportunity. He again reiterates his readiness to constructively engage with the Government, beginning with issues that both acknowledge as human rights concerns.

[1] The most recent request for an official visit to Belarus was made in July 2013.

8. The Special Rapporteur has pursued wherever possible the collection of information from primary sources. He is grateful for the extensive cooperation that he has enjoyed with many stakeholders living in Belarus. Since assuming his mandate, he has undertaken four trips, between November 2012 and July 2013, to Lithuania and Ukraine to meet a broad range of civil society representatives, experts and victims of human rights violations from Belarus, receiving first-hand information from them. In both States, he met representatives of their respective ministries of foreign affairs.

9. The Special Rapporteur stands ready to continue to offer his support to civil society, in accordance with his mandate, and acknowledges its commitment to the protection of human rights for all.

II. Elections and human rights

10. In the present report, the Special Rapporteur focuses on human rights in the context of electoral processes in Belarus.

11. In any country, elections are the focal act of the expression of public will, culminating in the appointment of legislators and the holders of the highest State positions. Elections are not simple administrative techniques; they are the strongest link between universal human rights and national democracy. The Universal Declaration of Human Rights (art. 21, para. 3) states that "the will of the people shall be the basis of the authority of government". Article 25 (b) of the International Covenant on Civil and Political Rights reiterates the overarching importance of genuine periodic elections "guaranteeing the free expression of the will of the electors".

12. It is this two-way relationship between human rights and elections that lends centrality to the human rights underlying electoral processes. The full realization of the right to elect and to be elected always depends on a number of relevant additional factors and general and specific sets of human rights. Such a prerequisite is the rule of law itself. Furthermore, both between elections and in the preparation of election cycles, authorities should ensure that citizens have, and the media is able to offer, pluralistic access to information about candidates and political profiles. Freedom of peaceful assembly and association is needed to ensure that citizens are free to attempt, publicly and collectively, to convince others to change their opinion. Non-discriminative campaign regulations; election administration and polling equipped by independent and impartial commissions; and the free movement of domestic and international observers are necessary to safeguard the right of any citizen to stand for election or vote without being subordinated to any "unreasonable restrictions" (art. 25 of the International Covenant on Civil and Political Rights) and without fearing retaliation for doing so. A fearless election atmosphere also depends on the availability of an effective and independent system of appeals and remedy, capable of democratically solving disputes that arise in the context of elections.

13. In Belarus since 1991, four presidential elections (1994, 2001, 2006 and 2010), five parliamentary elections (1995, 2000, 2004, 2008 and 2012) and five local elections (1995, 1999, 2003, 2007 and 2010) have been held. Of those observed by the Office for Democratic Institutions and Human Rights of the Organization for

Security and Cooperation in Europe (OSCE/ODIHR), none were considered free and fair.[2]

14. The state of election-related human rights is epitomized by the fact that, in the most recent parliamentary elections, held on 23 September 2012, none of the 110 seats went to any opposition candidates. Belarus today is the only State in Europe with a parliament without an opposition. This has invariably been the case since 2004, whether the opposition did or did not boycott the elections.

15. In 2012, some opposition parties and candidates decided to boycott the elections, citing procedural violations, media discrimination and the imprisonment of opposition activists.[3]

16. The refusal of the opposition to participate in the elections in 2012 was also motivated by the lingering legal effects of the crackdown against the peaceful demonstrators protesting against the observed irregularities in the aftermath of the presidential elections in 2010; the arrest and conviction of many prominent candidates, acknowledged as arbitrary by the Working Group on Arbitrary Detention (see A/HRC/WGAD/2011/13 and A/HRC/WGAD/2012/14), and the continuing incarceration of several of them (even at the time of the writing of the present report). In its turn, the experience of the presidential elections in 2010 fitted with the uninterrupted trend of the past 15 years. Elections have not been rights-based procedures serving the citizens to shape the future of Belarus, but have been transformed into tools used to maintain power. It is the recurring experience of Belarusians that candidates who might consider running an agenda not espousing the President's ideas are discouraged from running by regulatory or extralegal means, if not directly harassed or arrested. Those who used the opportunities earlier, just as in 2010, were severely targeted in the aftermath.

17. The subject of human rights in electoral processes was also identified by the Special Rapporteur as his theme for the present report for the following reasons:

(a) In the aftermath of the 2010 presidential elections, a severe deterioration in the human rights situation occurred, which then triggered Human Rights Council resolution 17/24, in which the Council requested the High Commissioner to monitor the human rights situation in Belarus, and resolution 20/13, by which the Council established the mandate of the Special Rapporteur;

(b) Within the first year of the mandate, parliamentary elections were held in 2012;

(c) Evidence from past elections in Belarus shows a pattern of increased human rights violations during the periods prior to and following elections and on election day itself;

(d) On 3 January 2013, a law on amendments to the Electoral Code was included in the legislative plan for 2013, approved by a presidential decree;[4]

(e) The next round of presidential elections is scheduled for 2015.

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[2] OSCE did not monitor local elections in Belarus.

[3] OSCE/ODIHR election observation mission, "Republic of Belarus, parliamentary elections, 23 September 2012, final report" (Warsaw, December 2012).

[4] See www.pravo.by/main.aspx?guid=3871&p0=P31300001&p1=1, p. 4.

18. The present report is therefore an opportunity for timely reflection and a call to the State authorities to jointly review legislation, policies and practices, in order to ensure a human rights environment for free, fair, genuine and meaningful elections. The Special Rapporteur suggests that the present report be read in conjunction with the report to the General Assembly at its sixty-eighth session of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/68/299), which addresses the freedoms of peaceful assembly and association in the context of elections. The two reports, being submitted at the same time to the Assembly, underscore the importance for States to uphold their obligations to promote and protect the freedoms of peaceful assembly and association in general and in particular during electoral processes. The full enjoyment of both these freedoms is itself indicative of the human rights situation in any country, being the pathway along which many other civil, cultural, economic, political and social rights are exercised.

III. Overview of elections and referendums since 1991

19. In 1991, Belarus became an independent sovereign State. On 15 March 1994, a new constitution was adopted by the Supreme Soviet[5] and Belarus became a presidential republic, although considerable powers remained with the Supreme Soviet.

Presidential elections of 1994

20. The first presidential elections were held on 23 June and 10 July 1994. Alyaksandr Lukashenka was elected President with 80.1 per cent of the vote in the second round (44.8 per cent in the first round). These elections are widely viewed as the most free and fair elections to have been held in the history of independent Belarus.

Referendum of 1996 (unopposed powers for the President)

21. Controversy between the Supreme Soviet and the President began almost immediately after the elections of 1994. A hunger strike by opposition deputies, led by Zianon Pazniak, began in April 1995, after the President stated that the referendum would be held regardless of the vote of parliament. Numerous breaches of the Constitution by the President in 1995 and 1996 resulted in an attempt by the parliament to impeach him. Viktar Hanchar, the Chair of the Central Election Commission, who was appointed by the parliament, was dismissed by the President for opposing the referendum.

22. On 24 November 1996, the referendum initiated by the President succeeded, thus amending the Constitution. A voter turnout of 84 per cent approved the changes proposed by the President. The one-chamber Supreme Soviet was replaced with a bicameral parliament: a National Assembly comprising a 110-seat House of Representatives and a 64-seat Council of the Republic. The parliament was deprived of the power to initiate referendums and changes to the Constitution and to elect members of the constitutional and supreme courts and the Prosecutor-General. The President was given the authority to issue decrees having the force of law. Since

[5] From 1990 to 1996, the Supreme Soviet functioned as a permanent parliament.

then, the parliament has not been organized along party lines; instead prospective parliamentarians have been hand-picked by the presidential administration from local elites. Ever since the referendum, observers have widely reported fraud designed to ensure that selected loyalists win seats.[6]

23. At the same time, fundamental freedoms in Belarus have deteriorated.[7] In 1999 and 2000, four prominent opponents of presidential absolutism disappeared, among them Viktar Hanchar and Yury Zakharanka, a former Minister of the Interior. Notwithstanding the handwritten testimony of the Chief of the Criminal Police, Gen. Mikalai Lapatsik, in which he named the alleged high-ranking perpetrators (see CCPR/C/104/D/1820/2008, para. 2.6), the investigation was terminated (see A/HRC/23/52, paras. 46-49).

Referendum of 2004 (elimination of the two-term limit for the President)

24. On 17 October 2004, a further referendum eliminated the rule that the President could not be elected for more than two terms. National and international experts criticized the decision to hold another referendum using popularity to loosen constitutional constraints.[8]

25. Several protesters were arrested before and after the referendum, with reports of opposition leaders being beaten by police.[9]

Presidential elections of 2001

26. The presidential elections of 2001 were the first to be contested following the 1996 referendum. The three candidates offered a genuine political choice, although restrictive campaign regulations barred voters from full information about the various alternatives. International observation teams found fundamental flaws in the electoral process, which were then echoed in the presidential elections in 2006 and 2010, including:

(a) A political regime aimed at blocking opposition;

(b) Executive structures, including presidential decrees, with extensive powers to arbitrarily change the electoral environment, without commensurate legislative controls;

(c) A legal framework that fails to ensure the independence of the election administration, the integrity of vote counting and the process for tabulating results;

(d) Lack of guarantees for control and counting of early votes;

(e) An election administration system that is overtly partisan and dependent on the executive branch of the Government both nationally and locally;

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[6] See, for example, www.chathamhouse.org/media/comment/view/185899.

[7] OSCE/ODIHR limited election observation mission, "Republic of Belarus, presidential election, 9 September 2001, final report" (Warsaw, October 2001), p. 3.

[8] See, for example, http://naviny.by/rubrics/politic/2004/09/09/ic_news_112_249668 and the opinion on the referendum of 17 October 2004 in Belarus adopted by the European Commission for Democracy through Law (Venice Commission), No. 314/2004 (Strasbourg, 2004).

[9] "Oppositionists rally in Minsk to protest referendum proposal, arrests reported", http://charter97.org/eng/news/2004/10/11/miting.

(f) A campaign environment organized to disadvantage the opposition candidates, in particular, State-led smear campaigns to intimidate opposition activists and domestic and international observers, and a lack of access for opposition candidates to the predominantly State-owned broadcasting media;

(g) Censorship of opposition and independent print media.

Presidential elections of 2006 and 2010

27. In 2006, 4 candidates were registered to contest the presidential election, while in 2010 there were 10 candidates. According to official results, Mr. Lukashenka won both elections, receiving a vote of 84 per cent and 79.6 per cent, respectively.

28. On both occasions, post-election protests were broken up by police force and key political figures and hundreds of individuals were arrested. A number of participants in what were termed "unsanctioned activities" were sentenced by the courts to administrative arrests and fines, while others, including the presidential candidates, faced criminal proceedings, mostly under the title of "mass disturbances". Moreover, the aftermath of both elections spilled over into a longer period with a prolonged deterioration in the human rights situation.

Parliamentary elections

29. Parliamentary elections generally draw less attention than presidential elections. This is explained partially by the fact that the Constitution of 1996 significantly limited parliamentary powers to the advantage of the executive branch. In addition, since 2004 and uniquely in Europe, there have been no opposition members elected to the parliament. Although a number of parties are registered, the political system in Belarus lacks political pluralism. Numerous legal restrictions, excessive control measures by the executive, as described herein, and the majoritarian system block the possibility of building a strong party political system.

IV. Legal framework

30. The Electoral Code was adopted on 11 February 2000 and subsequently amended in 2000, 2003, 2006, 2010 and 2011. Some of the amendments were deemed progressive by OSCE and other international observers.[10] It has also been stated, however, that the legal framework still does not fully comply with OSCE commitments and other international standards, and continues to contain serious shortcomings.[11]

31. Although article 101 of the Constitution permits the President to issue decrees in "instances of necessity and urgency", such decrees, as illustrated by decrees Nos. 8, 11 and 20, deny the intent of the constitutional provision when the President is also a candidate and the decrees affect the electoral process, in particular by restricting the rights of other participants in the process — namely political parties, potential candidates and public associations.[12]

[10] See, for example, www.osce.org/odihr/elections/69373.

[11] OSCE/ODIHR Election Observation Mission, "Republic of Belarus, presidential election, 19 December 2010, final report" (Warsaw, February 2011), p. 1.

[12] OSCE/ODIHR limited presidential election observation mission final report, 2001, p. 8.

32. The Special Rapporteur is concerned that, in many instances, the Electoral Code and other relevant legislation place overlapping limitations on the rights and practices essential for free and fair elections. Several of these interrelated limitations are documented herein. The abundance of multiple, arcane restrictions of the right to be elected, to vote freely, to freedom of expression, opinion, peaceful assembly and association and to an effective remedy, fair trial and due process shows that an environment has not been created to ensure genuine and meaningful electoral processes.

33. The Special Rapporteur has been informed that current Belarusian legislation could easily be amended to allow for free and fair elections. The question of more weighty concern is how the electoral process is managed. The pattern of centralized political guidance and tolerated fraud in counting and tabulating the results has been very consistent throughout all elections and is evolving. Underlying this pattern is the fact that, in Belarus, it is the prerogative of the executive branch, both nationally and locally, to select the very election commissions, whose task would be to guide the elections independently of the executive.

34. As a first legal remedy for the situation, OSCE, human rights defenders (e.g. the campaign Human Rights Defenders for Free Elections, a joint undertaking of the Human Rights Centre Viasna and the Belarusian Helsinki Committee) and the Belarusian opposition parties[13] invariably insist on formalizing the key preconditions for free and fair elections in the Electoral Code. Of them, two are of paramount importance:

(a) Guarantee of independence of election commissions, including through pluralistic composition;

(b) Transparent vote count, including a detailed procedure for full and open observation by election commission members and other stakeholders.

35. The Special Rapporteur is concerned that the current electoral reform process is lacking in transparency and public participation. On 28 December 2012, the political parties requested the Central Election Commission and the presidential administration to publish proposed draft amendments to the Electoral Code and hold consultations on them. On 7 February 2013, the "For Freedom" movement, the Belarusian Popular Front party, the "Tell the Truth" campaign, the Belarusian Left Party "Fair World" and the Belarusian Green Party submitted an alternative draft project of the Electoral Code amendments to the presidential administration, the National Centre of Legislative Activity, the Government and to both houses of the parliament.[14] The campaign Human Rights Defenders for Free Elections also drafted and submitted recommendations regarding amendments to the Electoral Code.[15]

36. These submissions notwithstanding, political parties and civil society have been excluded from the discussion on amendments to the Electoral Code, and their

[13] The "For Freedom" movement, the Belarusian Popular Front party, the "Tell the Truth" campaign, the Belarusian Left Party "Fair World" and the Belarusian Green Party.

[14] The project is available in Belarusian from http://narodny.org/?p=3548.

[15] Human rights defenders for free elections, "Election to the Chamber of Representatives of the National Assembly of Belarus of the 5th Convocation", final report, 23 September 2012, available from www.european-exchange.org/fileadmin/user_upload/Belarus_Parlamentswahlen_2012/Final_Report_Parliamentary_Elections_Belarus_2012.pdf.

text remains unavailable to the public. On 11 January 2013, the Chair of the Central Election Commission, Lidzia Yarmoshyna, stated in a letter sent to a group of petitioning parties and organizations that "a draft legal normative act can be brought to public discussion in accordance with the decision of a State organ (official) who has the authority to adopt (issue) legal normative acts" and that, "in accordance with the law, the Central Commission does not belong to such organs".[16]

37. A governmental meeting on 6 August once again demonstrated the lack of consultation in amending the Electoral Code. Information from the meeting did not disclose the topics to be amended in the legislation and the President stated that it would be good if the meeting in question were to be the last before the draft legislation was sent to the parliament.[17]

38. National law stipulates that the electoral process is to be consistent with the international obligations of Belarus. Article 8 of the Constitution states that generally accepted principles and norms of international law supersede national laws. In line with these commitments, in 2009 the amendments were submitted to OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission), which issued a joint opinion on them.[18] Since then, however, the Central Election Commission has refused to send any new draft amendments for review by these regional human rights expert bodies. The Commission has justified this by stating that Belarusian legislation does not envisage an expert assessment of a draft law by OSCE/ODIHR and the Venice Commission.

V. Human rights and the rule of law in electoral processes

A. Freedom of opinion and expression

39. The full enjoyment of the right to freedom of opinion and expression, including that of a media that is independent through pluralism, is essential ahead of elections. Articles 33 and 34 of the Constitution provide such guarantees, stating that "no monopolization of the mass media [and] no censorship shall be permitted".

40. The Human Rights Committee repeatedly found Belarus to be in violation of these rights (see CCPR/C/95/D/1553/2007, CCPR/C/87/D/1009/2001 and CCPR/C/85/D/1022/2001). In a number of cases, violations were found in conjunction with elections (see, for example, CCPR/C/105/D/1226/2003 and CCPR/C/95/D/1553/2007). Belarus has been asked by the Committee to "take steps to prevent similar violations in the future" (see, for example, CCPR/C/104/D/1772/2008). The Special Rapporteur reiterates his concern about the systematic dismissal by Belarus of the views of the Committee and its lack of response to those views, which violate the obligations of the State under the Optional Protocol to the International Covenant on Civil and Political Rights.

41. Article 5 of the Constitution stipulates that political parties and other public associations are to have the right to use the State mass media under the procedure determined by the law. In the major broadcast media during the presidential elections in 2010, however, the incumbent received considerable support, while

[16] See http://charter97.org/ru/news/2013/1/11/63846/.
[17] See www.interfax.by/news/belarus/135174.
[18] See www.osce.org/odihr/elections/belarus/68711.

other candidates were given neither an opportunity to present their views beyond the limited free space and time given to all candidates, nor were their campaigns covered as issues of political significance. Reports also indicate that in the State newspapers candidates are not given an equal proportion of free space. During presidential elections, the electoral campaign of the incumbent is published on the front page of newspapers, while those of other candidates are less visible and allocated less space and the latter are often accompanied by negative comments, which is not the case with that of the incumbent. Critical outlets, such as Belsat and Radio Racyja, cannot cover electoral processes from inside the country because their journalists are repeatedly denied accreditation.[19]

42. In the eyes of the Special Rapporteur, the repressive atmosphere experienced during earlier elections leads even independent media workers and journalists to exercise self-censorship, including by avoiding critical reporting about the policies of the Government or giving full coverage to critics.

43. Following the most recent presidential elections, in December 2010, independent journalists and media workers were detained, among them Natalia Radzina, Iryna Khalip, Dzmitry Bandarenka, Pavel Seviarynets, Siarhei Vazniak and Aliaksandr Fiaduta, and several of them reported serious violations of their procedural rights.[20] Pressure against Ms. Khalip continued after the end of the election cycle, including with reported threats against her by the Head of the Corrections Department of the Minsk City Police Directorate, Aliaksandr Kupchenia.[21]

44. On 10 January 2011, the Ministry of Information charged Avtoradio with disseminating information that allegedly contained public appeals to extremist activities. The incriminating phrase was the following statement, aired on Avtoradio, by presidential candidate Andrei Sannikau: "the fate of your country is not decided in the kitchen, it is sealed in the Square". The station appealed against the decision but was shut down nevertheless.[22]

45. In addition to their limited access to the media, opposition candidates are banned from publicly considering a boycott of an election.[23] The Human Rights Committee considered that advocating non-cooperation with an electoral exercise must be allowed for any person (see CCPR/C/81/D/927/2000).

46. The restrictions on communications at election time come with elevated protection for officials. In its resolution 22/6, the Human Rights Council unanimously called upon States to ensure that legal provisions did not prevent public officials from being held accountable. In Belarus, article 47 of the Electoral Code prohibits campaign materials from containing "insults or slander in relation to official persons of the Republic of Belarus and other candidates". A competing candidate found in violation of this provision can have his or her registration cancelled. The Venice Commission noted that in Belarus the protection of the

[19] OSCE/ODIHR parliamentary election observation mission report, 2012, p. 13.
[20] See http://humanrightshouse.org/Articles/15978.html.
[21] See http://humanrightshouse.org/Articles/19095.html.
[22] See http://humanrightshouse.org/Articles/16213.html.
[23] See http://humanrightshouse.org/Articles/18584.html.

reputation or rights of others is used to "limit, diminish, or suppress a person's right to free political expression and speech".[24]

47. The protection of the "reputation of the Republic" is also a severe restriction on free debate as to the quality of the Government. Article 369-I of the Criminal Code makes it a criminal offence to discredit Belarus by giving international organizations "false information" on the situation in the country or the legal status of its citizens.

48. The Special Rapporteur is concerned that these legal provisions are aimed at allowing the Government to control and sanction what is communicated during electoral processes, which is antithetical to the conditions for free and fair elections.

B. Freedom of association

49. The right to freedom of association is fundamental to democracy because it enables people to found political parties to represent their views and put forward candidates in elections. It is also essential to the right of non-party citizens to collectively participate in electoral processes, to promote their views, to influence Governments and to organize observation of elections (see A/HRC/20/27, paras. 12 and 13).

50. In Belarus, as previously noted by the Special Rapporteur the scope and limits of freedom of association are restricted in various provisions by the criminal and administrative codes as well as by overtly restrictive registration regulations and their draconian application. A genuine right to associate should, as a principle, be as simple as possible, with State interference possible only when prescribed by law and complying with the strict tests of necessity and proportionality in a democratic society (see A/HRC/20/27, paras. 16, 17 and 84 (e)).

51. Some regulations are in evident contradiction with the international human rights obligations of Belarus, such as article 193-1 of the Criminal Code, which criminalizes activities by unregistered organizations. Article 15 of the Law on Associations states that registration can be refused in cases of violation of the registration formalities "if such infringements are irreversible". On this basis, non-governmental organizations are frequently denied registration for minor, easily remediable faults in complex registration documentation.

52. The Special Rapporteur is concerned that the threefold oppressive framework, consisting of a permissive registration regime, the selective denial of registration and the criminalization of functioning without registration, is also aimed at hampering the participation in elections of independent associations and opposition political parties.

53. Belarusian non-governmental organizations engaged in monitoring elections regularly face difficulties. One serious example is that of warnings issued by the Ministry of Justice to the Belarusian Helsinki Committee, which could lead to the withdrawal of registration. The Ministry claimed that the Committee "depicted a distorted view of the current state of affairs in the country" and thereby violated legislation on non-governmental organizations (see A/HRC/18/19, para. 29). In fact,

[24] OSCE/ODIHR and Venice Commission, joint opinion on the electoral legislation of the Republic of Belarus, 2006. Available from www.osce.org/odihr/elections/belarus/25360, para. 67.

the Committee had merely reported on its monitoring of elections. The Special Rapporteur is particularly worried about reports indicating further harassment of this non-governmental organization, including legal proceedings aiming at its dissolution.

54. Viasna is another case of a non-governmental organization engaged in election monitoring. Registered by the Ministry of Justice on 15 June 1999, Viasna arranged for some 2,000 people to observe the presidential elections of 2001 (see CCPR/C/90/D/1296/2004). On 2 September 2003, the Ministry requested the Supreme Court to dissolve Viasna. As noted by the Human Rights Committee, dissolution was "based on perceived violations of the State party's electoral laws carried out during the association's monitoring of the 2001 presidential elections" (ibid., para. 7.4). The Committee found a violation of the right to freedom of association and requested an appropriate remedy, including the re-registration of Viasna and compensation, neither of which has been complied with.

55. The Special Rapporteur urges the authorities to support and encourage national non-governmental organizations that carry out electoral monitoring and voter education, which are essential for free and fair elections.

Political parties

56. Articles 4 and 5 of the Constitution imply a provision for the right of people to create political parties and be united in these parties without any compulsory membership. Articles 2 and 4 of the Law on Political Parties reaffirm the right of Belarusians to form political parties based on freedom of association, democracy, rule of law, transparency, self-governance and the equality of all political parties and unions. Regulations on the registration of a political party are restrictive and complicated, however.

57. Article 23.24 of the Code on Administrative Offences prohibits receiving, as well as storing and transferring, "gratuitous" foreign aid and provides a list of activities that cannot be funded from abroad, including financing of political parties, unions (associations) of political parties or preparation and conduct of elections, organization or conduct of meetings, street processions, demonstrations, picketing, strikes, production or distribution of agitation materials, conduct of seminars or any other type of political and mass agitation work with the population.

58. It is worrying that, in Belarus, the customary activities of a political party impede its ability to receive foreign funding. In addition, the vague definition of what constitutes political activities invites arbitrary, selective and politicized application and, again, self-censorship of activities. Transparency of party funding is a legitimate demand, but creating rules that bar parties from receiving grants from abroad for public activities directly affects their ability to participate in elections.

59. There are 15 registered political parties in Belarus. Of them, 14 managed to pass the compulsory re-registration process in 1999 and 1 was registered in 2000. Owing to the risk of criminal prosecution as an unregistered organization, political

associations choose to register as non-governmental organizations.[25] Consequently, they cannot present a party candidate in elections, only individual candidates.

60. Repression of human rights defenders and political activists in the aftermath of the presidential elections in 2010 affected the work of many non-governmental organizations. Owing to numerous searches and confiscation of equipment, some were deprived of technical bases for their activities. In-country activities of international non-governmental organizations were also limited, as in the case of expulsion of, or denial of entry to, members of the Committee on International Control over the Human Rights Situation in Belarus, a union of 30 international non-governmental organizations established on 27 December 2010, although they had all the necessary legal documentation.[26]

61. The Special Rapporteur has noted that several investigations relating to a number of criminal cases in the aftermath of the elections in 2010 are continuing against parties and associations and preventive detention of their members continues to be regularly practised.[27]

C. Freedom of peaceful assembly

62. While the Special Rapporteur notes with satisfaction that certain groups were allowed to hold indoor assemblies, including on the death penalty, he has been informed during his consultations that the Belarusian authorities do not allow any kind of public assembly if it aims at raising awareness about human rights issues or participating in an electoral process. The authorities regularly prohibit peaceful gatherings and use "hooliganism" or similar charges of misdemeanour to detain, intimidate and silence citizens (see A/HRC/23/52, para. 82).

63. Even before the elections in 2010 and 2012, the Law on Mass Events of 1997 unnecessarily restricted freedom of assembly. Its definition of a picket (public expression) even includes hunger strikes.

64. The Human Rights Committee holds that a public assembly is the "coming together of more than one person for a lawful purpose in a public place, and therefore consists of more than one individual" (CCPR/C/50/D/412/1990, para. 7.6). In Belarus now even an action by a single person may fall under the Law on Mass Events. The limitations on freedom of peaceful assembly notwithstanding, some individuals continue to risk fines and imprisonment to make their views public.

65. Furthermore, the Law on Mass Events requires all organizers to apply for permission. According to international human rights standards, the exercise of the right to freedom of assembly should not be subject to previous authorization; at most it should be subject to a prior notification procedure only for large assemblies or for assemblies where some degree of disruption is anticipated (see A/HRC/23/39, para. 52).

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[25] Amnesty International, "What is not permitted is prohibited: silencing civil society in Belarus" (London, 2013), p. 6. Available from www.amnesty.org/en/library/asset/EUR49/002/2013/en/ee200280-5735-435c-b8cd-4a72add1ebf4/eur490022013en.pdf.

[26] See www.hrw.org/news/2011/03/17/belarus-prominent-human-rights-defender-expelled.

[27] Legal Transformation Centre and Assembly of Pro-Democratic NGOs, "Freedom of association and legal status of non-commercial organizations in Belarus, annual review 2011". Available from www.lawtrend.org/en/data/1101/.

66. After the elections in December 2010, when thousands were dispersed by riot police (see paras. 73-79 below) and hundreds arbitrarily detained, Belarus took further worrying steps towards a repressive legal system de facto banning the right to peacefully assemble. The amendments to the legislation on mass events in November 2011 toughened responsibility for any violation. They established new bureaucratic procedures and expanded the opportunity for prohibitive and restrictive measures to be introduced.

67. There is now an absolute ban on peaceful spontaneous assemblies, simultaneous assemblies and counter-demonstrations and restrictions on the time and place of meetings offer numerous opportunities to restrict events, in violation of international human rights norms and standards (see A/HRC/20/27, paras. 30, 91 and 92, and A/HRC/23/39, para. 59). The provisions of the law that determine the requirements for organizers, participants and the procedure for receiving authorization are discriminatory. The inclusion in the definition of mass events of actions by a single person or actions without the involvement of many people lacks reasonable grounds (see A/HRC/23/52, para. 83).

68. Articles 5 and 6 of the Law on Mass Events establish excessive requirements on organizers in the process of authorization of assemblies. The organizers must indicate in their application measures for securing public order and safety, provision of medical services and the cleaning of the space, again in violation of international human rights norms and standards (see A/HRC/20/27, para. 31, and A/HRC/23/39, para. 57). The law does not include provisions as to what specific measures would satisfy such requirements.

69. Article 15 of the same law provides for the immediate liquidation of any organization that fails to abide by the vague notions of the legislation or the assembly of which violates "the legal interests of citizens, organizations, or State or public interest".

70. Article 293 of the Criminal Code criminalizes organizers and participants of mass disorder that result in "arson, violence against persons, pogroms, destruction of property, and armed resistance to authorities". After the presidential elections in December 2010, a number of people were prosecuted on the basis of this article and article 342 of the Criminal Code, which imposes sanctions for "serious breach of public order".

71. During the parliamentary elections in 2012, according to the Law on Mass Events, opposition candidates were unable to set up pickets for collecting signatures for the nomination of candidates. In the cases of Leu Marholin, Mikhail Vasilieu, Hanna Kurlovich, Aliaksandr Artsybashau, Pavel Vinahradau and Yahor Viniatski, a court considered such picketing to be a violation of the Law on Mass Events.[28]

72. Not only restrictive by nature, the Law on Mass Events contradicts the Electoral Code. The Human Rights Committee noted that limiting pickets to certain predetermined locations, regardless of the kind of manifestation or the number of participants, raised doubts as to the necessity of such regulation under the obligation of Belarus to ensure the right to freedom of expression for all (see, for example,

[28] Legal Transformation Centre, "Restrictions on the freedom of assembly in Belarus: judicial practice on administrative cases in 2012", sections VI-H and VI-K. Available from http://lawtrend.org/en/content/foundation/news/Monitoring-report-Restrictions-freedom-assembly-Belarus-court-practice-on-administrative-cases-2012/.

CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010). Furthermore, imposing penalties for "participation in an unauthorized meeting" restricts the freedom of peaceful assembly as well as the right to impart information (see, for example, CCPR/C/85/D/1022/2001, para. 7.2, and CCPR/C/101/D/1604/2007, para. 10.4).

73. The Special Rapporteur is concerned that these restrictions severely curtail the right to freedom of peaceful assembly ahead of elections. In any country, on election night spontaneous assemblies can happen; such restrictive measures make it impossible for the authorities to maintain public order without using excessive force and arresting people. The Special Rapporteur urges the authorities to take measures to facilitate and protect such assemblies.

74. Included in such a policy should be the training of security forces. Independent monitoring undertaken in 2012 shows that police officers are not well informed about the freedom of peaceful assembly and their function to protect it.[29] Their actions are often aimed at stopping an event and detaining participants. Little consideration is given as to whether the participants present a real danger to public order. The Special Rapporteur urges the authorities to ensure that law enforcement and administrative officials are properly trained regarding the facilitation and protection of the right to freedom of peaceful assembly (see A/HRC/20/27, para. 84 (h)).

75. All electoral stakeholders should be able to exercise their right to assemble during an electoral process without the threat of arrest. The Special Rapporteur urges the authorities to ensure that cases of pressure, intimidation or detention of voters or candidates are investigated in a prompt, impartial and thorough manner, with perpetrators held accountable and victims able to obtain redress.[30]

D. Arbitrary detention

76. Arbitrary administrative and criminal detention, as already reported by the Special Rapporteur, is used as a means to intimidate, harass and punish individuals, especially when they are engaged in undesired activities (see A/HRC/23/52, para. 70). Journalists, lawyers, human rights defenders and members of political parties report being detained, beaten in the process and charged with speculative administrative and criminal offences.

77. The presidential elections of 2006 and 2010 were marred by pre-election and post-election day detentions, including of representatives of national observation groups and political candidates, and by instances of pressure and harassment against opponents and activists, including increased surveillance of candidates, and the misuse of administrative resources to promote the incumbent.[31]

[29] Legal Transformation Centre, "Restrictions on the freedom of assembly in Belarus".

[30] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 11.

[31] OSCE/ODIHR Election Observation Mission, "Republic of Belarus, presidential election 19 March 2006, final report" (Warsaw, June 2006), pp. 13, 20 and 29; OSCE/ODIHR election observation mission, OSCE/ODIHR presidential election observation mission, final report, 2011, p. 2.

78. In 2006, some 400 verified campaign-related incidents were reported where opposition staff were harassed, fined or arrested.[32]

79. In 2010, hundreds of riot police violently dispersed some 5,000 demonstrators who had gathered for a post-election evening demonstration, arresting many, including seven presidential candidates, their campaign managers and proxies and hundreds of activists, among them journalists, civil society representatives and foreign citizens. The President announced that 639 people had been arrested and confirmed that the State Security Committee was interrogating rival presidential candidates, whose whereabouts was not known for two days.[33]

80. The Human Rights Committee and the Working Group on Arbitrary Detention found Belarus to be in breach of the International Covenant on Civil and Political Rights because of the following rules on detention: the law permits pretrial detention based solely on the gravity of the charges raised against a detainee (see CCPR/C/86/D/1100/2002 and CCPR/C/99/D/1502/2006). Under article 126 (4) of the Criminal Procedure Code, detention on remand can be authorized by the Prosecutor, the Ministry of the Interior, the Chair of the State Security Committee or the Deputy Chair of the State Control Committee/Director of the Finance Investigation Department. A detainee may appeal to the court against detention. The court can check the legality of the procedure and the reasons for detention, but, in practice, it does not use the full scope of its powers. Accountability for offences typically committed by plain-clothes police is rare, as in the case of mass detentions at the club Yo-ma-yo in 2012.[34]

81. The Working Group on Arbitrary Detention found the detention of Ales Bialiatski, head of Viasna, to be arbitrary, in contravention of article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights. The Working Group emphasised that "the adequate remedy is to release Mr. Bialiatski and accord him an enforceable right to compensation pursuant to article 9, paragraph 5" of the Covenant (see A/HRC/WGAD/2012/39). Viasna undertakes countrywide election observation.

82. The Special Rapporteur urges the authorities of Belarus to ensure that the detention of an individual should be ordered only by a judge, and that pretrial detention is applied only in exceptional circumstances.

E. Independence of judges and lawyers

83. The Human Rights Committee has regularly expressed concern at the failure of Belarus to respect the obligation of judicial independence, given that the Code on the Judicial System and the Status of Judges of 2007 sets out all the fundamental principles necessary for safeguarding judicial independence (see CCPR/C/78/D/814/1998 and CCPR/C/86/D/1100/2002). The dependence of the judiciary on the executive branch is rooted in the imbalance between the branches in the powers vested in the Constitution of 1996, however. There remains a concern

[32] OSCE/ODIHR presidential election observation mission, 2006, p. 13.

[33] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011" (Warsaw, November 2011), para. 45.

[34] Legal Transformation Centre, "Restrictions on the Freedom of Assembly in Belarus", sect. VI-F.

that the President continues to appoint, dismiss and determine the tenure of judges (see CAT/C/BLR/CO/4, para. 12).

84. In consultations in Vilnius and Kyiv in 2012 and 2013, the Special Rapporteur learned that many Belarusians do not trust the judiciary and believe that it places the interest of the authorities above protecting the rights of citizens.

85. During an electoral process, the independence and impartiality of the judiciary play a particularly important role because they represent a guardian for the rule of law and democratic principles, including electoral rules and proceedings.

Appeals

86. The amendments to the Electoral Code notwithstanding, mechanisms to review complaints and appeals still do not provide an effective remedy, in contradiction to articles 2 and 8 of the Universal Declaration of Human Rights and article 2 of the International Covenant on Civil and Political Rights.

87. Complaints against decisions of election commissions can be lodged with higher commissions. Limited types of decisions can be appealed to courts, including the appointment of members of election commissions, omissions in voter lists, decisions of the Central Election Commission, denial of candidate registration and invalidation of elections. Appeals, depending on their nature, should be adjudicated within three to five days. In most cases, no redress is available to stakeholders if their rights are infringed during the electoral process. The decision of the Commission announcing election results cannot be subject to appeal in the courts.[35]

88. Following the presidential elections in 2006, two presidential candidates, Aliaksandr Kazulin and Aliaksandr Milinkevich, filed requests to the Central Election Commission to invalidate the elections. Both requests were rejected. They sought to challenge the results of the elections before the Supreme Court, but the Court ruled the challenges inadmissible.[36]

89. During the presidential election in 2010, the Central Election Commission received 421 complaints, proposals or requests for clarification before election day. Only five resulted in a resolution, namely with decisions against the complainants, and without appropriate legal reasoning as to their rejection. Of the additional 120 complaints relating to the election received by the Prosecutor's Office and 147 complaints sent to local administration bodies, none were resolved.[37]

Due process and fair trial

90. During the presidential elections in 2006 and 2010, there were concerns about the right to a competent, independent and impartial tribunal. Foremost was the pervasive influence of the executive in matters normally reserved to the purview of the courts. The role of the prosecutor in Belarus goes beyond that of criminal prosecution, including authorizing arrests and general supervision over legality in society. The close relationship between the prosecutor and the judge gave rise to suspicions of judicial bias regarding legal rulings and sentencing in the trials relating to the elections in 2006 and 2010. The presence of Ministry of the Interior

[35] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 16.
[36] OSCE/ODIHR presidential election observation mission final report, 2006, p. 25.
[37] OSCE/ODIHR presidential election observation mission final report, 2011, pp. 16 and 17.

and, reportedly, State Security Committee personnel at the trials may have influenced the judges, the lawyers and, in general, the conduct of the proceedings.[38]

91. The administrative court hearings relating to the elections in 2006 and 2010 were undertaken either in the judge's room, or in closed sessions, with access granted only by court summons. During the hearings, the accused were sentenced either to pay administrative fines or were incarcerated for between 10 and 15 days for participating in unauthorized mass events.[39]

92. All 41 defendants in the trials that were held following the presidential election in 2010 were found guilty in the first instance proceedings. No judgement was altered on appeal. Eleven defendants were given non-custodial sentences, while 30 received custodial sentences, ranging from two to eight years' imprisonment. Twenty-eight of the convicted persons, including three former presidential candidates, remained in prison after their trials.[40]

93. Similar concerns about fair trials were raised in independent monitoring of administrative trials in 2012, including limitations on the right to a public hearing; neglect of procedural rules; a selective approach to the examination of evidence, leading to accusatory bias; violation of the principle of equality of arms; and violation of the presumption of innocence.[41]

Reparation and effective remedy, including rehabilitation

94. As discussed herein, the criminal legislation contains provisions that are not in line with internationally recognized standards. These provisions were widely used in criminal cases brought against some of the participants in events following the election in 2010. This has since affected their ability to further participate in political processes because people who have been convicted of a criminal offence are not allowed to stand as candidates for public office following their release from prison as long as they have a criminal record.[42] All political prisoners should not only be released and compensated, but also fully rehabilitated, with their criminal record removed, in accordance with international human rights law.

Independence of lawyers and access to independent counsel

95. The lack of independence of lawyers was noted in 2001 by the Special Rapporteur on the independence of judges and lawyers while visiting Belarus, when she spoke of a pattern of intimidation and interference in the discharge of the professional functions of lawyers (see A/HRC/17/30/Add.1, para. 101).

96. Lawyers reportedly face interference, harassment, intimidation or other consequences for defending the interests of their clients and overall interference with lawyer-client confidentiality. Impediments to gaining access to and practising the legal profession are further compounded because lawyers are prevented from forming an independent bar association.

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[38] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 14.

[39] OSCE/ODIHR presidential election observation mission final report, 2011, p. 23.

[40] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 11.

[41] Legal Transformation Centre, "Restrictions on the Freedom of Assembly in Belarus", sect. IV-B.

[42] Articles 60 and 98 of the Electoral Code and article 33 of Law No. 204-Z on Public Service (2003).

97. Cases linked to electoral processes are seen by the authorities as especially sensitive, as reflected by the lawyers disbarred following the presidential elections in 2010. Aleh Ahejeu, Tatsiana Ahejeva, Uladzimir Toustsik, Tamara Harajeva, Pavel Sapelka and Tamara Sidarenka lost their licences while representing defendants in connection with the demonstration that was held after the election in 2010. Such interference in the independence of the legal profession also denies defendants the right to access of a counsel of their choice.

98. The Special Rapporteur is concerned that these continuing limitations to the right to equality before the courts and to a competent, independent and impartial tribunal result in the failure of the State to guarantee the right to a fair and due process, including the presumption of innocence and access to an independent counsel.

F. Torture and other cruel, inhuman or degrading treatment

99. The use of torture and other ill-treatment by law enforcement officials reportedly persist in order to, among other things, extort confessions that are then used as evidence in court (see CCPR/C/106/D/212/2011, para. 11.2). This is despite the fact that torture is prohibited under article 25 of the Constitution and reflects the gap between the legislative framework and its practical implementation. The Committee against Torture notes that articles 128 and 394 of the Criminal Code do not criminalize torture in accordance with article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CAT/C/BLR/CO4, paras. 10 and 16).

100. In the run-up to the presidential election in 2006, a presidential candidate, Aliaksandr Kazulin, was detained and charged with two offences under the Criminal Code. Serious allegations were made that he and an non-governmental organization activist were ill-treated while in detention, including reports of severe beatings and other forms of cruelty.[43]

101. During the trials following the presidential election in 2010, allegations of ill-treatment of detainees while in police custody were raised. Judges failed to follow up on allegations by defendants that statements made were obtained under duress, intimidation, inhuman treatment and possibly torture. Defence motions to exclude evidence based on the alleged maltreatment were ignored or denied.[44]

102. The urgent concerns about cases of torture and ill-treatment in the aftermath of the presidential election in 2010 were raised jointly and separately by several special procedure mandate holders concerning the situation of former presidential candidates Andrei Sannikau, Uladzimir Niakliaeu, Aliaksei Mikhalevich and other activists (see A/HRC/17/27/Add.1, para. 249, and A/HRC/19/61/Add.4, paras. 26-29).

103. The practice of arrests carried out by plain-clothes police officers or mistreatment by masked people makes it impossible for perpetrators to be identified later when complaints of ill-treatment are raised (see CAT/C/BLR/CO/4, para. 8). This means that no genuine investigation and effective remedy is available to victims and there is a lack of accountability and impunity for the perpetrators.

[43] OSCE/ODIHR presidential election observation mission final report, 2006, p. 26.

[44] OSCE/ODIHR, "Trial monitoring in Belarus, March-July 2011", para. 19.

104. In response to allegations related to the aftermath of the presidential election in 2010, the Committee against Torture raised concerns about numerous, consistent reports that detainees were frequently denied basic fundamental legal safeguards, including prompt access to a lawyer and a medical doctor, and the right to contact family members (see ibid., para. 6).

105. The Special Rapporteur believes that there is an urgent need for a high-level public announcement on the prohibition of torture, for measures to be taken to effectively prevent acts of torture and ill-treatment by State officials and for the conduct of prompt, impartial and full investigations and the prosecution of alleged perpetrators.

VI. Election observation

106. Article 13 of the Electoral Code provides for domestic and international observation of the election process. Both domestic and international observers are, however, subject to regulatory and practical limitations that, the minor improvements in 2011 notwithstanding, make it impossible to observe the entirety of the process.

International observers

107. In the past, Belarus has invited several international election observer missions. The two largest teams have been the OSCE/ODIHR missions, which worked in cooperation with the parliamentary assembly observers from both OSCE and the Council of Europe, and those separately delegated by the Commonwealth of Independent States and its parliamentary assembly.

108. The findings of the two teams were quite different. The Commonwealth of Independent States missions published summaries that invariably found the elections in Belarus to be in compliance with democratic norms; open and transparent; and the expression of the free will of the citizens, using this same wording for both the parliamentary elections in 2012 that resulted in a parliament with no opposition members and for the presidential election in 2010 that saw the exclusion and subsequent arrest of several presidential candidates and the detention of hundreds of others in the ensuing protests. OSCE/ODIHR issues detailed recommendations based on long-term observations and a uniform expert methodology that is internationally acknowledged as a standard. In the parliamentary elections in 2012, the mission found that many OSCE commitments, including citizens' rights to associate, to stand as candidates and to express themselves freely, were not respected, some improvements to the electoral law notwithstanding.[45] After the presidential election in 2010, OSCE/ODIHR stated that "Belarus has a considerable way to go in meeting its OSCE commitments for democratic elections".[46]

109. While it is commendable that international observers are regularly invited to Belarus, the leaders of the country and the State media do not give equal weight to the diverging evaluations, preferring to repeat only the findings that endorse the

[45] OSCE/ODIHR parliamentary election observation mission final report, 2012, p. 1.

[46] OSCE/ODIHR presidential election observation mission final report, 2011, p. 1.

process and the results and dismissing critical international expertise as political and anti-Belarus.

Domestic observers

110. Representatives of public associations, political parties, citizens' groups, labour collectives and media outlets have the right to be accredited as domestic observers, to attend sessions of commissions with which they are registered and to observe election day proceedings. In an amendment to the law in 2011, the registration of observers was eased by lifting the previous requirement that a party or public association needed a registered local unit in order to be accredited.

111. Guarantees of direct and effective opportunities to monitor voting, the count and the tabulation of results are missing, recommendations to that effect by all OSCE/ODIHR missions notwithstanding. The law does not provide observers with the right to receive certified copies of the results protocol. There are no legal specifications for the observation of signature verification, for review of the voter lists, or for witnessing the handover of the results protocol from precinct commissions to higher levels; neither are the rights of observers specified for the actual compilation of the results. There is thus no concept of the need for observers to be present at these crucial moments.

112. The law is consistently interpreted in a restrictive way by the electoral commissions, the composition of which to this date remains the prerogative of the local and State authorities. As a result of the power of the executive to choose members of the commissions, representatives of opposition political parties accounted for less than 1 per cent of the electoral commissions in the elections in 2012.[47] Notwithstanding a resolution passed by the Central Election Commission for the presidential elections in 2010, providing that observers should be given a real opportunity to observe the counting procedures, observers reported that they were not given a clear view of the count.[48]

113. The predominantly pro-government composition of the electoral commissions is also decisive for the registration of observers. Although a total of 36,096 domestic observers registered in the most recent presidential elections, the most active alliance of independent observers, Human Rights Defenders for Free Elections, was able to deploy only 600 observers, while 20,715 observers were nominated by organizations pledging support to the incumbent President.

114. That observers were not given a meaningful opportunity to observe the process was one of the main reasons why OSCE/ODIHR and most international analyses deemed consecutive elections in Belarus as lacking an honest count, in the sense of the requirements for voting described in paragraph 7.4 of the Document of the Copenhagen Conference on the Human Dimension of the Conference on Security and Cooperation in Europe.

[47] Human Rights Defenders for Free Elections, "Election to the Chamber of Representatives of the National Assembly of Belarus of the 5th Convocation, Republic of Belarus", final report, 23 September 2012.

[48] OSCE/ODIHR presidential election observation mission final report, 2011, p. 18.

VII. Conclusions and recommendations

115. **The Special Rapporteur concludes that the rights to vote and to be elected at genuine periodic elections are not guaranteed in Belarus. Belarus today is, and has been since 2004, the only State in Europe with a parliament without an opposition.**

116. **Information gathered from primary sources suggests overlapping, systematic and purposeful violations of the human rights underlying free and fair elections. With recourse only to an election management body that is not independent of the Government, a system of restrictive regulations and constant persecution of independent organizations and candidates, elections have been transformed into ceremonial tools used to perpetuate power.**

117. **The Special Rapporteur is grateful to all those who provided detailed first-hand information. He regrets that the Government did not avail itself of this opportunity. He reiterates his readiness to work with the Government and continues to offer his support to civil society. He will continue to request an official visit to the country before the end of 2013 and will seek a meeting with Belarusian officials at the time of the sixty-eighth session of the General Assembly.**

118. **With the next presidential elections scheduled for 2015, the Special Rapporteur recommends that the Government of Belarus review and fully implement the recommendations made by the United Nations High Commissioner for Human Rights in her report in 2012 (A/HRC/20/8), those he made in his report to the Human Rights Council at its twenty-third session (A/HRC/23/52) and those made over time by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation. In addition, the Special Rapporteur recommends that the Government:**

(a) **Ensure that the process of electoral legislative reform is undertaken transparently and inclusively, in full consultation with a broad number of stakeholders, even if draft legislation has already been put before the parliament, and in time for its full and effective implementation during the presidential elections in 2015;**

(b) **Guarantee independent election commissions through pluralistic composition;**

(c) **Ensure a transparent vote count, including for its full and open observation by election commission members and other stakeholders;**

(d) **Repeal the law making it a criminal office to criticize public figures or the Republic;**

(e) **Guarantee non-interference by the Government in the media, and a pluralistic, transparent and demonopolized ownership of broadcasting;**

(f) **Reform and improve the system of judicial self-governance with a view to freeing it from executive/presidential decision-making on issues such as discipline, benefits and bonuses, selection, promotion and disciplining of judges;**

(g) Reform the bar association, guaranteeing its independence in line with international standards;

(h) Ensure the adversarial nature of trials and the principle of equality of arms and ensure respect for the presumption of innocence and the right to defence;

(i) Expedite legislative reforms to ensure the absolute prohibition of torture and establish effective safeguards against torture and ill-treatment in law and practice, initiate prompt, impartial and thorough investigations into allegations of torture and ill-treatment and prosecute when warranted, without delay, and publicly call for the absolute prohibition of torture;

(j) Ensure thorough consideration of all accusations of torture made in the courts and, if confirmed, the inadmissibility of evidence obtained in such a way;

(k) Implement training and capacity-building for the police, the national security services and military personnel on international human rights standards;

(l) Investigate the cases of lawyers who represented individuals detained in connection with the events of 19 December 2010 and reinstates their licences;

(m) Conduct prompt, impartial and thorough investigations, as well as prosecution and punishment for any acts of intimidation and violence against human rights defenders and journalists;

(n) Repeal article 193.1 of the Criminal Code that criminalizes public activities without official permission;

(o) Ensure full rehabilitation for individuals who have been politically prosecuted and convicted, including the removal of any criminal record and limitations on their participation in political life and elections;

(p) Eliminate the permission-based registration procedure for assembly, association and the press;

(q) Cancel registration of foreign grants and international technical assistance and the list of purposes for which "gratuitous" foreign aid can be used;

(r) Amend the Law on Mass Events in Belarus to comply with the constitution and international standards;

(s) Recognize and extend full cooperation to the mandate holder by engaging in dialogue and facilitating a country visit by the end of 2013.

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Human rights and cultural diversity

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to its resolution 66/154 on human rights and cultural diversity in paragraph 19 of which it requested the Secretary-General to prepare a report on the implementation of the resolution, including efforts undertaken at the national, regional and international levels regarding the recognition and importance of cultural diversity among all peoples and nations in the world and taking into account the views of Member States, relevant United Nations agencies and non-governmental organizations. The Secretary-General was requested to submit the report to the Assembly at its sixty-eighth session.

Following the General Assembly's request, the Office of the United Nations High Commissioner for Human Rights invited States, United Nations agencies and non-governmental organizations to submit written information on efforts undertaken in that regard. The report provides a summary of the submissions received. The information from Governments focuses on measures taken within the State to promote cultural diversity and to protect and ensure access to cultural heritage.

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I. Introduction

1. On 19 December 2011, the General Assembly adopted resolution 66/154 on human rights and cultural diversity. In paragraph 19 of that resolution, the Assembly requested the Secretary-General to prepare a report on the implementation of the resolution, including efforts undertaken at the national, regional and international levels regarding the recognition and importance of cultural diversity among all peoples and nations in the world and taking into account the views of Member States, relevant United Nations agencies and non-governmental organizations, and to submit the report to the Assembly at its sixty-eighth session. The Office of the United Nations High Commissioner for Human Rights (OHCHR) requested submissions from States and relevant organizations on the efforts undertaken; as at 2 July 2013, 14 replies had been received from States, and the United Nations Educational, Scientific and Cultural Organization (UNESCO) and one non-governmental had organization each submitted a response. The present report contains a summary of the submissions received.

II. Summary of information received from Governments

Argentina

2. Argentina's response indicated that the government's policy on cultural diversity has been an important part of its promotion of human rights and that this policy has been successful over the past decade. In fulfilment of its commitment at the World Conference against Racism held in Durban, South Africa, in 2001, Argentina developed a policy paper entitled "Towards a National Plan against Discrimination in Argentina: Diagnosis and Proposals". In 2005, the paper was approved by a presidential decree, which also mandated the National Institute against Discrimination, Xenophobia and Racism to coordinate the implementation of the proposals.

3. This policy framework has guided several initiatives, including the establishment, in 2011, of an Intercultural Section responsible for promoting cultural diversity by addressing discrimination based on, inter alia, ethnicity, culture, religion and language. The programmes implemented by the Intercultural Section are focused on indigenous peoples, persons of African descent, migrants and the Jewish, Arab, Armenian and Muslim communities.

4. In December 2011, the National Institute against Discrimination, Xenophobia and Racism supported the creation of a research centre on development and training in religious and ethnic cultural diversity. The Centre's main objective is to promote research and to develop joint programmes aimed at seeking the commitment of the public sector on the promotion of cultural diversity.

5. Regarding education, workshops and teacher-training events on cultural diversity and awareness of discriminatory practices have been held for secondary schools and for the general public, and public discussions have focused on the historical, cultural and social legacy of persons of African descent. The National Institute against Discrimination, Xenophobia and Racism has also screened school manuals for negative stereotyping and has produced texts and audiovisual materials to combat discrimination and promote cultural diversity.

Belarus

6. In its submission, Belarus noted that it had not experienced any conflicts provoked by ethnic or religious differences. This is attributable to Government policy, a high degree of tolerance within Belarusian society and a history of peaceful inter-ethnic relationships. The Government's policy on inter-ethnic relations is based on strict compliance with the Constitution and with the Law on Ethnic Minorities. The latter prohibits any direct or indirect restriction of rights and freedoms on ethnic grounds and guarantees equality in the realization of political, economic and social rights and freedoms as well as the equal protection of all citizens. Belarus has established the position of Commissioner for Religions and Nationalities at the ministerial level, with the Commissioner being responsible for the promotion and protection of the rights of all ethnic groups. The Commissioner works with the Consultative Inter-ethnic Council to formulate recommendations on Government policy with regard to national minorities.

7. Belarus has been running a development programme since 2011 in the fields of religion and national relations and in relation to collaboration with the diaspora. The programme will continue until 2015. As at 2013, there are 180 civil society organizations, representing 26 ethnicities, that are involved in conducting educational, cultural and benevolent assistance programmes. There are also over 300 folk art groups in Belarus.

8. On 19 and 20 June 2013, the Ministry of Foreign Affairs of Belarus, OHCHR and the United Nations Office in Belarus will hold a seminar on racial discrimination, xenophobia and other forms of intolerance.

Cyprus

9. Cyprus underscored the commitment of its Ministry of Education and Culture to promoting diversity of cultural expression. To that end, the Ministry subsidizes national and regional events that facilitate intercultural dialogue, such as festivals, musicals, theatre and dance performances. It also operates several subsidy schemes for the benefit of individuals, civil society organizations and local authorities.

10. Cyprus has signed several bilateral agreements incorporating arrangements to collaborate with other countries in the fields of education, culture and science. The Cultural Services responsible for implementing agreements on cultural collaboration organize events aimed at promoting Cypriot culture abroad and host events organized in Cyprus by other countries. Within the framework of bilateral agreements, the partners of Cyprus encourage direct contact between artists and private and public institutions in the fields of the arts and culture and support initiatives to promote cooperation in literature, music, cinematography, photography, theatre and dance. Museums and galleries are encouraged to participate in organizing exhibitions on history, art, design and architecture. Bilateral cooperation also has as an objective the implementation of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Georgia

11. The submission by Georgia provided information on its initiatives to promote cultural diversity, including the Modern Fine Arts Development Programme, which has been operating for several years under the auspices of the Ministry of Culture and Monument Protection. The aim of the programme is to support the implementation of the Government's policy in the sphere of fine arts and to contribute to developing and disseminating fine arts. Within the framework of the programme, the Tbilisi International Forum of Contemporary Art (the "Artisterium") is held annually and is organized by the Ministry with support from fine arts institutions, the cultural and press attachés of the embassies represented in Georgia as well as media and broadcasting companies.

12. In 2009, the Ministry of Culture and Monument Protection established a programme to support Georgian books and literature, with the objective of contributing, through various projects, to the popularization of Georgian literature locally and abroad. The programme implements government policy in literature and library affairs through activities such as book fairs and support to libraries.

13. The Programme for the Development of Georgian Professional Music, supported by the Government, seeks to promote music, the popularization of classical music, the professional development of young performers and the maintenance and preservation of cultural heritage. Various international festivals, contests and musical evenings have been held over a number of years as part of the programme. Similarly, the Programme for the Development of Georgian Professional Dramatic Arts envisages the implementation of Government policy in the sphere of professional dramatic arts, the maintenance of local traditions and the development and popularization of Georgian theatre arts.

14. In order to share contemporary trends in foreign theatre and to integrate Georgian theatre internationally, the Ministry promotes the annual Tbilisi International Theatre Festival showcasing the works of various foreign theatre companies. Workshops, seminars and training courses in the dramatic arts are held under the guidance of renowned artists and theatre specialists. Thus, leading international art critics and producers familiarize themselves with Georgian theatre production, and contacts between Georgian and foreign professionals are developed.

15. Georgia cooperates extensively with international organizations with a view to seeking their support in obtaining donor assistance to disseminate and preserve Georgian culture and cultural heritage. To that end, the Ministry launched the Programme for the Support of Foreign Cultural Relations and "The Georgian Seasons" programme to bolster the visibility of Georgian culture internationally. The Programme for the Support of Foreign Cultural Relations seeks to establish cooperation with Government institutions and non-governmental organizations responsible for culture abroad; organize cultural events with the participation of eminent representatives of world culture; and execute agreements, protocols of intention and cooperation programmes. The Georgian Seasons programme includes cultural, educational and scientific projects for implementation in various countries by Government-supported cultural organizations, private groups and Georgian artists living and working abroad.

Holy See

16. The Holy See's response affirmed its support for valuing cultures within the human rights framework and stated that the Universal Declaration of Human Rights is necessary because it proclaims those rights but does not confer them. The Holy See recalled its strong opposition to the implementation of the objectives of Millennium Development Goals 4, 5 and 6, particularly with regard to the promotion of contraception and abortion as solutions to the matters of child mortality, maternal health and HIV. The response denounced all belief in the inferiority of certain peoples and their cultures and encouraged the promotion of all positive aspects of those cultures. It drew a distinction between nationalism and patriotism, stating that while nationalism advocates contempt for other nations and cultures, patriotism is a legitimate love for one's country that does not seek to promote its culture at the expense of others.

17. The Holy See noted that the Catholic Church emphasizes that the authenticity of each culture should be measured against, among other things, the manner in which it promotes human dignity. Moreover, if the radicalization of cultural identities is a matter of concern, a passive acceptance of any culture, based on a secularized conception in which God and religions are excluded, is also dangerous. The Holy See called for an end to the scientific and cultural predominance of "occidental cultural schemes", which claim to accomplish good while avoiding any reference to transcendence.

18. The response recalled that dialogue among cultures is based on the existence of common values, an area where religions can and should contribute. The Holy See encouraged respect for cultural pluralism and for every fair initiative that aims to foster intercultural dialogue and promotes greater unity among human beings as a collectivity.

Islamic Republic of Iran

19. The submission by the Islamic Republic of Iran provided comprehensive information on the activities of the Non-Aligned Movement Centre for Human Rights and Cultural Diversity established under the Tehran Declaration and Plan of Action. With a special focus on the human rights challenges that developing countries have in common, the Centre promotes the universality of human rights as well as their realization.

20. Between 2011 and 2012, the Centre held several international academic events attended by more than 1,200 people, including events outside the country. Most notably, these included the first and second international summer school on human rights and cultural diversity, a conference on human rights and cultures and a seminar on cultural diversity and human rights education. In 2012, it hosted its first week-long autumn school on human rights and cultural diversity, during the twenty-first session of the Human Rights Council, held in Geneva. These events were conducted along with diplomatic briefings on the Centre's work.

21. The response noted that the academic events were greatly enriched by the cooperation and support of a range of organizations and institutions, including the Iranian Red Crescent Society, the Irish Centre for Human Rights, the Iranian Islamic

Human Rights Commission and the Iranian National Commission for UNESCO, as well as eminent scholars.

Jordan

22. Jordan was one of the early parties to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and has made progress in its implementation, including through the nomination of an official spokesperson on the subject of diversity of cultural expressions and the provision of support to relevant institutions and civil society organizations.

23. The Ministry of Culture has played a pivotal role in the protection of culture and creativity since its establishment, contributing by running various programmes and hosting events on cultural diversity. These activities include the National Programme for the Development of a Culture of Dialogue, a communication and culture programme, participation in international book fairs, festivals, conferences and forums on culture and art and participation in "culture weeks" in countries with which Jordan enjoys friendly relations.

24. With respect to the relevant legal framework, Jordan provided information on applicable Constitutional provisions. The Constitution stipulates that all Jordanians are equal before the law and prohibits discrimination on the basis of language, religion or ethnic origin. Personal freedoms are guaranteed under article 7, and articles 14 and 16 guarantee freedom of religion or belief and freedom of association and assembly, respectively.

25. Jordan's reply noted that the Ministry of Culture nonetheless faces a number of challenges in implementing its mandate. In particular, it referred to inadequate private sector participation in the financing of cultural activities, little public awareness of the importance of cultural development and poor coordination between official cultural institutions and community organizations.

Lithuania

26. In its submission, Lithuania stated that the majority of the programmes administered by the Ministry of Culture contribute to promoting intercultural dialogue and cooperation at the local, national, regional and international levels. The programmes provide financing for various projects and promote activities to enhance partnerships between cultural institutions and individuals, develop cultural exchanges, and broaden the space for intercultural dialogue.

27. In 2011, the Minister of Culture approved the Regional Culture Development Programme for 2012-2020. The aim of this programme is to foster creative self-expression throughout all regions, ensure cultural diversity, and develop civic awareness. The action plan to implement the programme includes a wide range of measures to improve the quality of the cultural amenities and services in all regions and to ensure access to culture for local residents, guests and tourists.

28. Lithuania's support for regional cultural projects contributes directly to reducing cultural and social exclusion, encouraging cultural activities and promoting intercultural dialogue and cooperation. The support provided for child and youth education projects assists in introducing children and young people (including those

representing national minorities) to a diversity of cultural expressions and in encouraging joint initiatives among Government institutions, municipal institutions and civil society organizations.

29. The Ministry of Culture coordinates the measures envisaged in the National Minority Policy Development Strategy, which runs until 2015. Its key priorities are to ensure the integration of national minorities into Lithuanian society, create conditions for national minorities to preserve their national identity, and promote national tolerance.

30. In order to meet the cultural and educational needs of persons belonging to national minorities, cultural centres have been established in major cities of Lithuania. These centres carry out activities designed to ensure access to culture for various national, cultural and linguistic groups and to promote cultural self-expressions for national minorities at the local, national and regional levels. In order to foster the cultural identity of national minorities and to support the diversity of cultural expressions, the Ministry of Culture subsidizes cultural projects proposed by national minority non-governmental organizations. Priority is accorded to projects that meet various criteria, including promoting the dissemination of the culture of national minorities in Lithuania and abroad and the preservation of the cultural heritage of national minorities.

Mauritius

31. The response by Mauritius emphasized that the ethnic groups coexisting in Mauritius uphold their traditional values through the celebration of festivals, some of which have been declared public holidays. Fostering traditional values has contributed to preserving the Mauritian cultural identity and is the basis for cultural development in Mauritius, thus contributing to the protection of human rights and fundamental freedoms.

32. The Government organizes annual festivals to celebrate Divali, Eid and Christmas, among other celebrations, with the objective of fostering mutual understanding and a sharing of values among various cultural communities. Many artistic and cultural events are also organized to ensure the promotion of all aspects of cultural heritage, and include the International Day for the Remembrance of the Slave Trade and its Abolition, World Theatre Day and World Book Day.

33. Mauritius promotes cultural pluralism by encouraging exchanges with other countries. These exchange programmes involve groups of artists, the exchange of documentation, and exchanges among professionals in various cultural and artistic fields. Mauritius underscored the importance of the programmes in the promotion of and respect for cultural diversity and human rights.

34. The Mauritian Cultural Centre Trust aims to promote Mauritian culture through, among other activities, the collection, publication and dissemination of information on Mauritian culture, the organization of lectures, seminars, workshops, exhibitions and other activities, and the establishment of links with local and international organizations engaged in the promotion of culture.

35. In its response, Mauritius also referred to the legislative framework within which cultural diversity and a range of cultural rights are protected, including the

Constitution, which is the overarching law that guarantees the right to practise one's own culture.

Oman

36. Oman's response made reference to the important role played by the Oman National Commission for Education, Science and Culture in promoting cultural diversity. In 2012, the Commission organized a seminar to discuss cultural diversity and its role in creating linkages among cultures. In addition to Oman, 11 Arab countries, together with experts from UNESCO, participated in the seminar. The main objectives of the seminar were to highlight Oman's efforts to promote cultural diversity and underscore the role of cultural diversity in enriching dialogue among civilizations. In cooperation with UNESCO, the Commission also organized a training workshop entitled "A Culture of Dialogue for Peace", the objective of which was to train trainers on peace negotiation skills.

Peru

37. The submission by Peru highlighted the following measures adopted by the Government to enhance cultural dialogue in a context of respect and tolerance. In 2010, a Vice-Ministry for Intercultural Dialogue was created within the Ministry of Culture, with the purpose of promoting and guaranteeing social equality and respect for the rights of indigenous peoples. The Ministry of Culture has issued Guidelines on Cultural Policy based on the recognition of cultural differences and on the need to integrate intercultural dialogue into Government policy in all areas. The Guidelines drew inspiration from the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169) and from the United Nations Declaration on the Rights of Indigenous Peoples.

38. On 7 September 2011, the Government promulgated a law on the right of indigenous people to prior consultation, in order to give effect to the provisions of ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples and taking into account the claims of indigenous peoples who had objected to the previous draft of the law. The government has also adopted regulations to ensure the effective implementation of the right to prior consultation. In order to adopt regulations to establish the procedure of the right to prior consultation, a public consultation was held, and several inputs from indigenous organizations were incorporated into the regulations.

39. The Government has also created an official database on indigenous or native peoples, following the recommendations of the ILO Committee of Experts on the Application of Conventions and Recommendations. An official register of indigenous translators and facilitators has also been set up to facilitate the exercise of the indigenous peoples' right to prior consultation. Technical assistance has been provided to several Government departments in order to assist with the identification of issues that require prior consultation and to train public servants and interpreters in the implementation of procedures to give effect to that right. Other measures have been adopted by different State authorities, including those in charge of agriculture, mining, municipal government and culture, to promote the participation of indigenous peoples in decision-making processes.

40. The Government of Peru has adopted measures to promote the protection of indigenous cultural heritage, intercultural and bilingual education, and the right to use, strengthen, promote and transmit indigenous languages, and has developed educational materials for primary and secondary schools to combat discrimination and promote tolerance and understanding among indigenous peoples and other sectors of society.

Republic of Korea

41. In its response, the Republic of Korea noted that the Ministry of Culture, Sports and Tourism aims to make a positive contribution through laws and institutional arrangements for the protection and development of cultural diversity locally and abroad. These laws and institutional arrangements facilitate the promotion of the value and importance of cultural diversity throughout Korean society. The Ministry is also responsible for establishing the legal framework for policies and activities on cultural diversity and for promoting coexistence and harmony among different cultures. The Ministry plans to develop a cultural diversity indicator to be used to assess Government policies and strategies, as well as private sector programmes and activities, in order to ensure the equal development of different cultures, including marginalized cultures and those facing the threat of extinction.

42. A law to facilitate the implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions was promulgated on 4 December 2012. The Republic of Korea has been involved in a number of cooperative projects with UNESCO, which include promoting the traditional Vietnamese handicraft industry, supporting the establishment of an institute to foster culture in Burkina Faso and the preservation and development of traditional Uzbek and Kazakh handicrafts.

43. Since the Republic of Korea became a member of the Organization for Economic Cooperation and Development in 2010, the Ministry has collaborated with the international community to contribute to addressing global issues by increasing overseas development assistance in the field of culture, with a focus on improving cultural diversity and culture welfare. The Ministry has been active in raising awareness of cultural diversity through education. It focuses on developing education on cultural diversity and the arts and cooperates with UNESCO in advancing education on culture and the arts. Furthermore, the Ministry sends between 5,000 and 6,000 fine arts teachers every year to schools, welfare centres, correctional centres and other places where deprivation is prevalent. It has plans to provide training to media and broadcasting personnel, primary and secondary school teachers and senior company executives, among others, and to design a curriculum specifically aimed at mainstreaming cultural diversity education.

44. The submission by the Republic of Korea indicated that during the International Arts Education Week held from 19 to 25 May 2013, 35,000 people participated in approximately 300 workshops, forums and other cultural activities.

Syrian Arab Republic

45. The reply from the Syrian Arab Republic noted that its civilization has been enriched by many different civilizations and cultures over the course of its history, which has brought about its distinctive cultural and religious diversity. This diversity has made Syrian society an example of coexistence and social cohesion among the different cultural and religious groups, which have coexisted for thousands of years.

46. The Constitution enshrines the principles of freedom and equality and stipulates that Syrian society is based on solidarity and respect for social justice and on upholding the human dignity of each individual. Article 33 guarantees equality and non-discrimination on the grounds of sex, origin, language, religion or belief, and article 42 provides for freedom of belief. Article 31 of the Constitution provides for the Government to support scientific research and guarantees cultural, literary and artistic freedom. Article 34 provides for the right of all citizens to participate in the political, social, economic and cultural life of the country.

47. The Ministry of Culture provides support for cultural expression and diversity, including Arab, Armenian, Kurdish and Cherkess folklore. Through its Directorate for Non-tangible Heritage, the Ministry protects all cultural expression, and material support is given to the arts and sciences, without discriminating between Syrian and other Arab artists and scientists.

48. The response indicated that all Syrians have the same cultural and educational opportunities, since education at all levels is free for all. Each citizen has the opportunity to learn the country's different languages and become familiar with the different cultures, such as Assyrian, Kurdish and Aramaic.

49. The Syrian Arab Republic is open to all cultures of the world, and such openness is promoted through the educational system, including through the teaching of different languages, different cultures and the history of different world civilizations. This openness has always been part of the Syrian tradition and the Government actively promotes it, including by way of broadening cultural and scientific exchange with many countries.

United Arab Emirates

50. The United Arab Emirates reaffirmed its commitment to human rights, emphasizing that the enjoyment of human rights without discrimination or exclusion ensures that all can claim justice and equality. All citizens are equal before the law and have the right to exercise their freedom of thought and expression.

51. The reply indicated that the Government supports civil society organizations representing different cultures in accordance with the international obligations of the United Arab Emirates. The Government believes in the human rights of communities residing in the United Arab Emirates, including the exercise of their cultural rights through officially licensed clubs and associations.

III. Summary of information received from United Nations Educational, Scientific and Cultural Organization

52. The submission by UNESCO noted that the organization is mandated by its Constitution to promote culture in its diversity through international cooperation and dialogue, based on respect for universal values, human rights and the equal dignity of all cultures. As the only United Nations organization with a specific mandate for culture, UNESCO has elaborated a significant corpus of international conventions in this field. Five of its conventions focus on the protection and promotion of cultural heritage in all its forms, and one is devoted specifically to the protection and promotion of the diversity of cultural expressions. Each of these instruments is driven by UNESCO's ethical mandate and notably, the promotion of cultural diversity within the larger framework of human rights.

53. While the UNESCO conventions in the field of culture are not human rights instruments as such, they play an important role in creating the necessary conditions for the realization of the right of everyone to take part in cultural life and in fostering the availability, accessibility, acceptability, adaptability and appropriateness of cultural heritage and expressions. Since its first instrument, the UNESCO normative corpus relating to culture has progressively strengthened the place of human rights in its principles and accompanying implementation policies.

54. The defence of human rights in relation to cultural diversity is especially important in post-conflict situations. On the one hand, special attention must be paid to preventing threats to cultural identities. On the other hand, culture in all its forms has proved to be a powerful instrument of resilience, reconciliation and reconstruction of affected societies and communities. In the recent case of Mali, in addition to taking action to help safeguard Malian cultural heritage and cultural expressions which were subject to repeated attacks during the recent conflict, UNESCO has cooperated with the International Criminal Court in its investigations into the deliberate destruction of Malian cultural heritage and persecution based on cultural grounds.

55. UNESCO is conducting consultations with Member States on education on the history of genocides and mass atrocities, especially the Holocaust. The aim is to assist interested countries to introduce these subjects in their curriculums, since education in this area can contribute to the promotion of tolerance, human rights and intercultural understanding. So far, UNESCO has had discussions with 14 countries in sub-Saharan Africa and 9 Latin American countries.

56. In January 2012, UNESCO, in partnership with the United States of America and Brazil, launched a new global project, entitled "Teaching Respect for All" to promote educational responses to discrimination and violence, through strengthening the foundations of mutual tolerance and cultivating respect for all people, regardless of colour, gender, descent, and national, ethnic or religious identity. Such initiatives are of vital importance in the context of globalization and in fostering mutual respect among peoples and cultures. The preparation of the policy guidelines and teaching materials is well under way and will be piloted throughout 2013 before a wider dissemination.

57. UNESCO emphasized that the use of appropriate languages in education is considered essential to the promotion of cultural diversity. UNESCO places emphasis on the importance of mother tongue instruction in formal and non-formal

education and annually celebrates the International Mother Language Day on 21 February with the aim of promoting multilingual education and cultural diversity. For the 2013 celebration, the theme "International Mother Language Day and the Book" was selected to underline the importance of promoting book provision, book development and quality textbooks to support literacy and education. In 2012, UNESCO launched an online consultation on early childhood care and education with a focus on mother tongue instruction. Progress has been made on the development of policy on mother tongue instruction and its implementation; however, it is still not a reality in many countries where monolingual education is the trend.

IV. Summary of information received from non-governmental organizations

Observatory of Diversity and Cultural Rights, University of Fribourg, Switzerland

58. The Observatory's response referred to the need to reinforce the principle that cultural diversity and human rights are mutually protective and noted that cultural rights, as part of our universal, indivisible and interdependent human rights, have a major role to play. Respect for cultural diversity is a broad principle and, in order to remain practical while avoiding relativism, focus on respect for human rights is crucial. Respect for human rights leads to mutual esteem for all cultural groups in all their richness, and intercultural dialogue, with a view to an improved understanding of universality, facilitates the identification of practices which, under the guise of "culture", are contrary to human rights.

59. The principle that human rights and cultural diversity are mutually protective implies respect for human beings as rights-holders and as free and responsible actors, as well as respect for and maintenance of heritage, culture and social systems, without which individual rights have no meaning. In this sense, cultures are not considered homogenous but, rather, as incorporating a pronounced internal diversity.

60. In considering cultural diversity, we are again faced with the archaic yet tenacious division between individual and collective rights, since all individual rights are realized through a right, a freedom or responsibility in relation to a social system. They are individual with regard to the subject matter and collective vis-à-vis their object. The principle of the mutual protection between human rights and cultural diversity implies a multifaceted approach with human beings at their centre but with due consideration for their creations, their know-how, traditions and ways of life.

V. Conclusion

61. In the submissions received, several States highlighted the legislative framework that supports their efforts to promote cultural diversity, particularly constitutional provisions, as well as legislation to protect the diversity of cultural expressions and the rights of ethnic and other minorities. Some responses indicated

that the promotion of cultural diversity was underpinned by clear policies, including those linked to other endeavours to protect human rights. There was emphasis on cooperation with other countries and with international organizations as a means of facilitating intercultural dialogue. In that regard, States provided information on cultural exchange programmes and on programmes and events to promote the arts, literature, music, film and dance, among other forms of cultural expression. Other submissions noted that human rights and cultural diversity are inextricably linked and that respect for human rights has an important role to play in facilitating cultural diversity.